

# Exhibit I



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# Transcript of David Vivian

**Date:** November 12, 2019

**Case:** Montage, Inc. -v- U.S. Department of State

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Transcript of David Vivian  
Conducted on November 12, 2019

1 (1 to 4)

<p style="text-align: center;">1</p> <p>1 BEFORE THE UNITED STATES CIVILIAN BOARD OF 2 CONTRACT APPEALS</p> <p>3 ----- 4 MONTAGE, INC., : 5 Appellant, : 6 -v- : CBCA Nos. 7 U.S. DEPARTMENT OF STATE, : 6168, 6213 &amp; 6376 8 Respondent. : 9 Contract No. SAQMM14C0200 : 10 -----</p> <p>11 DEPOSITION OF DAVID WESLEY VIVIAN 12 Reston, Virginia 13 Tuesday, November 12, 2019 14 9:43 a.m.</p> <p>15 16 17 18 19 20 Job No.: 269478 21 Pages: 1 - 297 22 Reported by: Paula Flint</p>	<p style="text-align: center;">3</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE APPELLANT:</p> <p>3 SALLY ANN HOSTETLER, ESQUIRE 4 SHIVA S. HAMIDINIA, ESQUIRE 5 ODIN FELDMAN &amp; PITTMAN, P.C. 6 1775 Wiehle Avenue 7 Suite 400 8 Reston, Virginia 20190 9 (703) 218-2100 10</p> <p>11 ON BEHALF OF THE RESPONDENT:</p> <p>12 RANDAL W. WAX, ESQUIRE 13 U.S. DEPARTMENT OF STATE 14 OFFICE OF THE LEGAL ADVISER 15 BUILDINGS AND ACQUISITIONS 16 600 19th Street, Northwest 17 Washington, D.C. 20522 18 (202) 616-3226 19</p> <p>20 ALSO PRESENT:</p> <p>21 Marianela Lugo 22</p>
<p style="text-align: center;">2</p> <p>1 DEPOSITION OF DAVID WESLEY VIVIAN, held at 2 the law offices of:</p> <p>3 4 5 ODIN FELDMAN &amp; PITTMAN, P.C. 6 1775 Wiehle Avenue 7 Suite 400 8 Reston, Virginia 20190 9 (703) 218-2100 10</p> <p>11 Pursuant to agreement, before Paula Flint, 12 Notary Public of the Commonwealth of Virginia. 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: center;">4</p> <p>1 C O N T E N T S</p> <p>2 EXAMINATION OF DAVID WESLEY VIVIAN PAGE 3 Ms. Hostetler 10 4</p> <p>5 6 E X H I B I T S 7 (Attached to transcript.)</p> <p>8 APPELLANT DEPOSITION EXHIBIT NO. PAGE 9 1 Previously Marked 15 10 2 Previously Marked 90 11 3 Previously Marked 91 12 4 Previously Marked 91 13 5 Previously Marked 277 14 27 Previously Marked 29 15 36 Previously Marked 124 16 46 Previously Marked 49 17 54 Previously Marked 280 18 55 Previously Marked 262 19 58 Previously Marked 175 20 61 Previously Marked 263 21 62 Previously Marked 200 22 64 Previously Marked 236</p>

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2 (5 to 8)

5		7	
1	EXHIBITS CONTINUED	1	EXHIBITS CONTINUED
2	(Attached to transcript.)	2	(Attached to transcript.)
3	APPELLANT DEPOSITION EXHIBIT NO. PAGE	3	APPELLANT DEPOSITION EXHIBIT NO. PAGE
4	65 Previously Marked 238	4	114 Email Communication - DOS-GUAYA0230494 210
5	66 Previously Marked 238	5	through 0230496
6	67 Previously Marked 240	6	115 Email Communication - DOS-GUAYA0065971 223
7	68 Previously Marked 199	7	through 0065984
8	69 Previously Marked 241	8	116 Email Communication - DOS-GUAYA0071308 248
9	70 Previously Marked 242	9	and 0071309
10	72 Previously Marked 201	10	117 Email Communication - DOS-GUAYA0066047 251
11	73 Previously Marked 208	11	through 0066081
12	76 Previously Marked 205	12	118 Email Communication - DOS-GUAYA0090326 255
13	77 Previously Marked 215	13	and 0090327
14	80 Previously Marked 167	14	119 Email Communication - DOS-GUAYA0066502 255
15	81 Previously Marked 220	15	and 0066503
16	86 Previously Marked 186	16	120 Email Communication - DOS-GUAYA0095422 264
17	97 Email Communication - DOS-GUAYA0012811 21	17	through 0095430
18	98 Email Communication DOS-GUAYA0121823 23	18	121 Email Communication - DOS-GUAYA0275871 267
19	99 Org Chart 34	19	through 0275878
20	100 Email Communication - DOS-GUAYA0070476 50	20	122 Email Communication - DOS-GUAYA0095405 267
21	101 Email Communication - DOS-GUAYA0069961 57	21	and 0095406
22	and 0069962	22	
6		8	
1	EXHIBITS CONTINUED	1	EXHIBITS CONTINUED
2	(Attached to transcript.)	2	(Attached to transcript.)
3	APPELLANT DEPOSITION EXHIBIT NO. PAGE	3	APPELLANT DEPOSITION EXHIBIT NO. PAGE
4	102 6/22/2018 Letter 61	4	123 Email Communication - DOS-GUAYA0095279 267
5	103 Email Communication - DOS-GUAYA0373521 71	5	and 0095280
6	104 Email Communication - DOS-GUAYA0064348 73	6	124 Email Communication - DOS-GUAYA0095248 267
7	through 0064351	7	through 0095250
8	105 Email Communication - DOS-GUAYA0066892 76	8	125 Email Communication - DOS-GUAYA0066369 267
9	through 0066896	9	through 0066371
10	106 Email Communication - DOS-GUAYA0070930 77	10	126 Email Communication - DOS-GUAYA0094092 286
11	and 0070934	11	127 Email Communication - DOS-GUAYA0018525 286
12	107 Org Chart 95	12	and 0018525
13	108 Email Communication - DOS-GUAYA0173262 107	13	128 Email Communication - DOS-GUAYA0375266 286
14	through 0172364	14	and 0275267
15	109 Email Communication - DOS-GUAYA0012008 117	15	129 2018 Report to Congressional Requesters 293
16	110 Screenshot 119	16	
17	111 Email Communication - DOS-GUAYA0026692 192	17	* * *
18	through 0026696	18	
19	112 5/7/2018 Letter 194	19	
20	113 Email Communication - DOS-GUAYA0115637 203	20	
21	through 0115640	21	
22		22	

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3 (9 to 12)

9	11
1 TRANSCRIPT INFORMATION REQUESTS	1 where there's no question pending let us know and
2 TRANSCRIPT DOCUMENT/DATA REQUEST PAGE/LINE	2 we can take a break. We have a breakout room for
3 Attachment 52/09	3 you as well.
4 Drafts or Recommendations 53/20	4 <b>A. Okay, thanks.</b>
5 Exhibit 80 Drafts 168/16	5 Q. So how long have you been with the
6 Calculations for Daily Rates 227/10	6 Department of State?
7	7 <b>A. Been with the Department of State</b>
8 * * *	8 <b>19 years now, 19 years and four months.</b>
9	9 Q. But who's counting, right?
10	10 <b>A. Exactly.</b>
11	11 Q. And you are currently the contracting
12	12 officer on the Guayaquil project that this case
13	13 is about?
14	14 <b>A. Well, I'm the branch chief and</b>
15	15 <b>contracting officer, senior contracting officer.</b>
16	16 <b>Donna Neal has her warrant again so she is the</b>
17	17 <b>contracting officer.</b>
18	18 Q. So she's currently the contracting
19	19 officer again?
20	20 <b>A. Correct.</b>
21	21 Q. How long was she not the contracting
22	22 officer?
10	12
1 Thereupon,	1 <b>A. Well, she was always the contract</b>
2 DAVID WESLEY VIVIAN,	2 <b>specialist. She was not the contracting officer</b>
3 called as a witness, and having been first duly	3 <b>for about 12 months, I think.</b>
4 sworn, was examined and testified as follows:	4 Q. We'll track that down in a bit.
5 EXAMINATION BY COUNSEL FOR APPELLANT	5 Can you briefly describe your
6 BY MS. HOSTETLER:	6 educational background?
7 Q. Please state your name.	7 <b>A. Yeah. I completed a Bachelor's degree</b>
8 <b>A. David Wesley Vivian.</b>	8 <b>in business at -- it's like Lebanon University</b>
9 Q. And where do you live?	9 <b>in -- near Scott Air Force Base in Illinois. I</b>
10 <b>A. In Woodbridge, 13604 Custis Street.</b>	10 <b>did four years there and then retired from the</b>
11 Q. And you are currently the Chief,	11 <b>Air Force.</b>
12 Architectural Engineering Contracting Branch,	12 Q. And would you briefly describe your
13 with DOS?	13 work experience and what you did before you got
14 <b>A. Correct.</b>	14 to the Department of State and your rise within
15 Q. Have you had your deposition taken	15 the Department of State?
16 before?	16 <b>A. Before I got to the Department of</b>
17 <b>A. Yes, I have.</b>	17 <b>State I was in the United States Air Force for</b>
18 Q. So you know the process, that we're	18 <b>26 years. I did four years as a jet engine</b>
19 going to try not to talk over each other so the	19 <b>mechanic and then cross trained to contracting.</b>
20 court reporter can take everything down, correct?	20 <b>Did 22 years --</b>
21 <b>A. Correct.</b>	21 Q. Thank you for your service.
22 Q. And if at any time you need a break	22 <b>A. Oh, yes. Thank you.</b>

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4 (13 to 16)

13	<p>1 <b>Did 22 years as a contract specialist,</b></p> <p>2 <b>contracting officer with the Air Force and then</b></p> <p>3 <b>retired from the Air Force in 2000 and been with</b></p> <p>4 <b>Department of State for 19 years.</b></p> <p>5 Q. Can you explain for me -- before we</p> <p>6 get to that, clearly as chief you oversee a lot</p> <p>7 of projects. This is just one of many. Is that</p> <p>8 accurate?</p> <p>9 <b>A. That's correct.</b></p> <p>10 Q. And when I refer to this project,</p> <p>11 we'll understand that we're talking about the</p> <p>12 Guayaquil project with Montage?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. So given your scope of what you do</p> <p>15 day-to-day, what did you do to prepare yourself</p> <p>16 and refresh your memory on what happened on this</p> <p>17 particular project?</p> <p>18 <b>A. I just read a couple of contracting</b></p> <p>19 <b>officer decisions that I had signed. While Donna</b></p> <p>20 <b>didn't have her warrant, I was required to sign</b></p> <p>21 <b>them. And that's just about it.</b></p> <p>22 Q. Prior to the Guayaquil project, did</p>	15	<p>1 Q. And able to do the job?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Let me show you what was previously</p> <p>4 marked as Exhibit 1 to Mr. Skov's deposition.</p> <p>5 This is what we call a 30(b)(6) notice and I just</p> <p>6 want to confirm for the record, sir, that you, as</p> <p>7 part of our deposition today, will cover topics</p> <p>8 7, 8 and 43. Will you look at those and make</p> <p>9 sure that those are things that you're familiar</p> <p>10 to testify to. Paragraph 7.</p> <p>11 <b>A. Seven?</b></p> <p>12 Q. Uh-huh. Eight. And 43.</p> <p>13 <b>A. Yes, I am familiar with those.</b></p> <p>14 Q. And other than reviewing the two</p> <p>15 contracting officer's decisions which you signed,</p> <p>16 which are 7 and 8, did you do anything else to</p> <p>17 prepare to answer questions with regard to those</p> <p>18 three categories?</p> <p>19 <b>A. No. I spoke to counsel, but that was</b></p> <p>20 <b>it.</b></p> <p>21 Q. So when -- you mentioned that you were</p> <p>22 the contracting officer for about a year on this</p>
14	<p>1 you have any prior experience with Montage?</p> <p>2 <b>A. Yes, I did.</b></p> <p>3 Q. And that was on the Copenhagen</p> <p>4 project?</p> <p>5 <b>A. That project as well as some others,</b></p> <p>6 <b>yes.</b></p> <p>7 Q. Hong Kong project?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And both of those finished either on</p> <p>10 time or ahead of schedule by a bit?</p> <p>11 <b>A. I know the Hong Kong project did. I'm</b></p> <p>12 <b>not sure about the Copenhagen.</b></p> <p>13 Q. Any other projects that you can recall</p> <p>14 working with Montage or being aware of Montage</p> <p>15 working on projects that were ultimately under</p> <p>16 your purview?</p> <p>17 <b>A. None in particular, but I've been</b></p> <p>18 <b>working with them since 2000 when I first joined</b></p> <p>19 <b>the Department of State.</b></p> <p>20 Q. Do you find them to be a reasonable</p> <p>21 contractor?</p> <p>22 <b>A. Yes.</b></p>	16	<p>1 project?</p> <p>2 MR. WAX: Objection, mischaracterizes</p> <p>3 testimony.</p> <p>4 <b>A. I assisted Ms. Neal because she didn't</b></p> <p>5 <b>have a warrant. So I was required to sign</b></p> <p>6 <b>documentation in her stead.</b></p> <p>7 Q. Did you sign that as the contracting</p> <p>8 officer?</p> <p>9 <b>A. Yes, I did.</b></p> <p>10 Q. So during what period of time were you</p> <p>11 filling the role as the contracting officer when</p> <p>12 Ms. Neal's warrant had expired?</p> <p>13 <b>A. From the time it expired to the time</b></p> <p>14 <b>she attained that warrant again.</b></p> <p>15 Q. And can you tell me when that was?</p> <p>16 <b>A. It seems to be September 2017 when she</b></p> <p>17 <b>lost it. Maybe '18. And then she got it back</b></p> <p>18 <b>just recently. About four months ago.</b></p> <p>19 Q. And how was the contractor alerted of</p> <p>20 that change in who the contracting officer was?</p> <p>21 <b>A. Donna Neal would have told them.</b></p> <p>22 Q. Would that be in writing or orally?</p>

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5 (17 to 20)

17	<p>1 <b>A. I would assume by email. I'm not</b></p> <p>2 <b>sure.</b></p> <p>3 Q. And how was OBO informed?</p> <p>4 <b>A. OBO? Donna would have told them that</b></p> <p>5 <b>she couldn't sign documentation if she was asked</b></p> <p>6 <b>to sign something and she would have sent it to</b></p> <p>7 <b>me or had another contracting officer sign the</b></p> <p>8 <b>documentation.</b></p> <p>9 Q. Would there have been an</p> <p>10 administrative mod that would have changed the</p> <p>11 contracting officer?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Do you know for a fact that the</p> <p>14 contract -- excuse me, the contractor and OBO</p> <p>15 were advised that she was no longer acting in the</p> <p>16 role as a contracting officer on this project in</p> <p>17 the September 2017 timeframe?</p> <p>18 <b>A. I'm not sure.</b></p> <p>19 Q. Do you know why she lost her warrant?</p> <p>20 <b>A. She didn't complete some of the</b></p> <p>21 <b>training classes that would be required to</b></p> <p>22 <b>complete 80 hours of contract-related training.</b></p>	19	<p>1 for the Guayaquil --</p> <p>2 <b>A. I believe it was about four months ago</b></p> <p>3 <b>that it was reinstated.</b></p> <p>4 Q. About four months ago.</p> <p>5 And again, how was OBO or the</p> <p>6 contractor notified of that?</p> <p>7 MR. WAX: Objection, calls for</p> <p>8 speculation.</p> <p>9 <b>A. I'm not sure.</b></p> <p>10 Q. Is there a process by which that is</p> <p>11 normally done within the State Department?</p> <p>12 <b>A. No. If a person has a warrant they</b></p> <p>13 <b>would sign as a contracting officer. If they</b></p> <p>14 <b>don't have a warrant, then they would not sign as</b></p> <p>15 <b>a contracting officer.</b></p> <p>16 Q. Would it make a difference to the</p> <p>17 contractor, as far as who were they dealing with,</p> <p>18 if they were dealing with someone who was no</p> <p>19 longer the contracting officer on the job?</p> <p>20 MR. WAX: I'm going to object, calls</p> <p>21 for speculation.</p> <p>22 <b>A. It just depends on what the direction</b></p>
18	<p>1 Q. Did she have a limit of warrant of</p> <p>2 some sort?</p> <p>3 <b>A. Yes, she did have a warrant.</b></p> <p>4 Q. Was it a limited warrant?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And what were the limits of that</p> <p>7 warrant? I haven't seen it, so just in general</p> <p>8 terms.</p> <p>9 <b>A. I think the dollar value was about</b></p> <p>10 <b>five million for signing as a contracting</b></p> <p>11 <b>officer. But that would be the only limitation.</b></p> <p>12 <b>She could sign contract actions up to one</b></p> <p>13 <b>million, but she could sign any documentation as</b></p> <p>14 <b>a contracting officer other than a contract</b></p> <p>15 <b>document.</b></p> <p>16 MR. WAX: While a question isn't</p> <p>17 pending, I would like to know for the record that</p> <p>18 the -- the way, at least depositions I'm involved</p> <p>19 in go, is that the witness should not be called</p> <p>20 to speculate. Thank you.</p> <p>21 Q. When did -- when was Ms. Neal's</p> <p>22 warrant reinstated, if that's the right phrase,</p>	20	<p>1 <b>or the discussion was about.</b></p> <p>2 MS. HOSTETLER: And Mr. Waxman, while</p> <p>3 there's no question pending too, I would say for</p> <p>4 the record that speaking objections are not</p> <p>5 permitted. You can object to the form of the</p> <p>6 question and I'll ask you if I can -- how I can</p> <p>7 clean up the question. But I would object --</p> <p>8 MR. WAX: It's not a speaking</p> <p>9 objection. But I hear what you're saying and</p> <p>10 I'll try to accommodate you to the extent I can.</p> <p>11 MS. HOSTETLER: Thank you, sir.</p> <p>12 BY MS. HOSTETLER:</p> <p>13 Q. Did you ever advise Montage or OBO</p> <p>14 that Ms. Neal had lost her warrant for a period</p> <p>15 of time on this project?</p> <p>16 <b>A. I'm not sure.</b></p> <p>17 Q. We've been provided with a lot of</p> <p>18 documentation, both from the Department of State</p> <p>19 as well as Montage has provided information to</p> <p>20 the Department of State from their files as well.</p> <p>21 And I can -- we can go through some of those, but</p> <p>22 there are -- during that September 2017 time</p>



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6 (21 to 24)

21	<p>1 period going forward, there were lots of emails</p> <p>2 to Ms. Neal as the contracting officer. Would</p> <p>3 that refresh your memory as to whether or not the</p> <p>4 contractor had ever been told that Ms. Neal was</p> <p>5 no longer the acting contracting officer?</p> <p><b>6 A. No, it wouldn't.</b></p> <p>7 MR. WAX: Are you going to be</p> <p>8 referring to preexisting exhibits?</p> <p>9 MS. HOSTETLER: If I do I will let you</p> <p>10 know.</p> <p>11 MR. WAX: Thanks. This is a big pile</p> <p>12 here and the more time you can give me the faster</p> <p>13 we can go.</p> <p>14 MS. HOSTETLER: Okay.</p> <p>15 (Exhibit 97 marked for identification</p> <p>16 and attached to the transcript.)</p> <p>17 BY MS. HOSTETLER:</p> <p>18 Q. Mr. Vivian, the court reporter's</p> <p>19 handed you an email string and you were actually</p> <p>20 on this email string from March 1, 2018, where</p> <p>21 it's from Mr. Skov, and Mr. Skov is referring to a</p> <p>22 teleconference with CO, Donna Neal. Do you see</p>	23	<p>1 the witness?</p> <p>2 (The Reporter read from the record as</p> <p>3 follows: "Q. Mr. Vivian, the court reporter's</p> <p>4 handed you an email string and you were actually</p> <p>5 on this email string from March 1, 2018, where</p> <p>6 it's from Mr. Skov and Mr. Skov is referring to a</p> <p>7 teleconference with CO, Donna Neal. Do you see</p> <p>8 that, sir?")</p> <p><b>9 A. Yes, I do.</b></p> <p>10 Q. And when you received this email on</p> <p>11 around March 1, 2018, did you reach out to either</p> <p>12 Mr. Skov or anyone at Montage to correct them</p> <p>13 that at this time Donna Neal was not the</p> <p>14 contracting officer?</p> <p><b>15 A. I did not.</b></p> <p>16 (Exhibit 98 marked for identification</p> <p>17 and attached to the transcript.)</p> <p>18 Q. So Mr. --</p> <p>19 MR. WAX: Will you give me a second?</p> <p>20 MS. HOSTETLER: I'm just going to ask</p> <p>21 him to look at it.</p> <p>22 Q. Mr. Vivian, the court reporter has</p>
22	<p>1 that, sir?</p> <p><b>2 A. Yes, ma'am.</b></p> <p>3 MR. WAX: Will you give me a second to</p> <p>4 read this, please? (Reviewing.)</p> <p>5 So before the witness answers let me</p> <p>6 ask you a question, because I don't know how</p> <p>7 you-all have been conducting your depositions. When an</p> <p>8 exhibit references an attachment, do you guys --</p> <p>9 have you and Jeff been just sort of leaving that</p> <p>10 aside or do you also attach the attachment?</p> <p>11 MS. HOSTETLER: It depends on whether</p> <p>12 the attachment is relevant to the line of</p> <p>13 inquiry. We've done it both ways. I think Jeff</p> <p>14 has started the process of not putting</p> <p>15 attachments when he started using all the claims</p> <p>16 without all the attachments.</p> <p>17 MR. WAX: I see. Thank you.</p> <p>18 MS. HOSTETLER: And my question here</p> <p>19 doesn't go to the attachment. But it goes to</p> <p>20 just the concept of Ms. Neal as being the</p> <p>21 contracting officer.</p> <p>22 So can you read my question back to</p>	24	<p>1 handed you what's been marked as Exhibit 98,</p> <p>2 which is an email string for which you are not</p> <p>3 copied on dated May 7, 2018. And let me know</p> <p>4 when you're ready to answer questions.</p> <p><b>5 A. Ready.</b></p> <p>6 Q. So in the bottom part of this email</p> <p>7 Donna Neal is sending an email to Fabian Rendon</p> <p>8 and the subject is CO visit. Do you see that,</p> <p>9 sir?</p> <p><b>10 A. Yes.</b></p> <p>11 Q. Who is Mr. Rendon?</p> <p><b>12 A. I don't know.</b></p> <p>13 Q. And she's making reference to the fact</p> <p>14 that she is making a trip to Guayaquil in -- on</p> <p>15 May 13 through May 16. Do you see that?</p> <p><b>16 A. Correct.</b></p> <p>17 MR. WAX: I'm going to object.</p> <p>18 You already answered.</p> <p>19 Q. And was it your understanding that</p> <p>20 Ms. Neal was going to Guayaquil acting as the CO</p> <p>21 in May of 2018?</p> <p><b>22 A. She was going to Guayaquil to attend a</b></p>



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7 (25 to 28)

<p style="text-align: right;">25</p> <p><b>1 meeting. I don't know that there's any CO</b></p> <p><b>2 decisions or CO documentation that needs to be</b></p> <p><b>3 provided during this meeting.</b></p> <p>4 Q. You did not attend this meeting,</p> <p>5 correct?</p> <p><b>6 A. Correct.</b></p> <p>7 Q. Do you know if the participants in</p> <p>8 this meeting thought that Donna Neal was the CO?</p> <p><b>9 A. I do not.</b></p> <p>10 Q. Do you recollect -- and we may get to</p> <p>11 it later if you don't. Do you recollect that</p> <p>12 this was a meeting discussing substantial</p> <p>13 completion of the project in May of 2018?</p> <p><b>14 A. No, I don't.</b></p> <p>15 Q. You testified that Ms. Neal got her</p> <p>16 warrant back, or is now the CO again for the</p> <p>17 Guayaquil project, approximately four months ago.</p> <p><b>18 A. Yeah, that's my estimate.</b></p> <p>19 Q. So my math may be wrong, but we're</p> <p>20 talking like May, April, August 2019. Can you</p> <p>21 help me out a little bit with when?</p> <p><b>22 A. No. It was sometime during the</b></p>	<p style="text-align: right;">27</p> <p>1 they were issued?</p> <p><b>2 A. I don't remember.</b></p> <p>3 Q. Would that have been something that</p> <p>4 would be typical of your responsibilities</p> <p>5 supervising Ms. Neal as the contracting officer?</p> <p><b>6 A. No.</b></p> <p>7 MR. WAX: I'm going to object to the</p> <p>8 form.</p> <p>9 Can you slow down, please?</p> <p>10 THE WITNESS: Oh, sorry.</p> <p>11 BY MS. HOSTETLER:</p> <p>12 Q. So it would be fair to say that it is</p> <p>13 not typical for you to review the CPARS of the</p> <p>14 contracting officers who work for you?</p> <p><b>15 A. Correct.</b></p> <p>16 Q. And when you said you reviewed them</p> <p>17 recently for purposes of this deposition, were</p> <p>18 you aware of any inaccuracies in those CPARS?</p> <p><b>19 A. Not that I recognized.</b></p> <p>20 Q. Did you see the reference with regard</p> <p>21 to the falsification of documentation?</p> <p><b>22 A. Yes, I did.</b></p>
<p style="text-align: right;">26</p> <p><b>1 summer, as I recall, that she got her warrant</b></p> <p><b>2 back.</b></p> <p>3 Q. During the summer, okay.</p> <p>4 And she's aware that she's currently</p> <p>5 the CO on the project?</p> <p><b>6 A. Yes, correct.</b></p> <p>7 Q. So at the time, in September of 2019,</p> <p>8 that Ms. Neal signed the CPARS she was actually</p> <p>9 acting as the contracting officer, correct?</p> <p>10 MR. WAX: I'm going to object to the</p> <p>11 form of the question.</p> <p><b>12 A. I don't know.</b></p> <p>13 Q. Did you have any involvement with the</p> <p>14 CPARS that were issued in September of 2019?</p> <p>15 MR. WAX: I'm going to object to the</p> <p>16 form.</p> <p><b>17 A. Not that I recall.</b></p> <p>18 Q. You didn't review the CPARS that were</p> <p>19 recently issued in -- from Montage?</p> <p><b>20 A. I reviewed them in preparation for</b></p> <p><b>21 this discussion.</b></p> <p>22 Q. But you didn't review them at the time</p>	<p style="text-align: right;">28</p> <p>1 MR. WAX: I'm going to object to the</p> <p>2 form.</p> <p>3 Q. And isn't it true, sir, that the</p> <p>4 Department of State determined that issue to be a</p> <p>5 clerical error?</p> <p>6 MR. WAX: I'm going to object to the</p> <p>7 form.</p> <p><b>8 A. Not that I know of.</b></p> <p>9 MR. WAX: Are we talking about one</p> <p>10 document or plural documents? Because you're</p> <p>11 saying CPARS.</p> <p>12 Q. Mr. Vivian, what are CPARS?</p> <p><b>13 A. CPARS are performance reports on</b></p> <p><b>14 contractors that are done periodically and then</b></p> <p><b>15 at the end of the project.</b></p> <p>16 Q. And the CPARS that were issued in</p> <p>17 September of 2019 were the CPARS -- the final</p> <p>18 CPARS?</p> <p><b>19 A. It seems like the project was complete</b></p> <p><b>20 by then, so it would be the final CPARS.</b></p> <p>21 Q. And so that is -- in answer to your</p> <p>22 counsel's question, that is one series of</p>

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8 (29 to 32)

29	<p>1 performance evaluation, correct?</p> <p>2 MR. WAX: I'm asking -- that wasn't my</p> <p>3 question. My question was are we talking about a</p> <p>4 single document or multiple documents. Because</p> <p>5 you're saying CPARS instead of CPAR.</p> <p>6 MS. HOSTETLER: Well, I think the</p> <p>7 witness has answered what CPARS are.</p> <p>8 Q. So in the documents that you reviewed</p> <p>9 in preparation for today, the September 2019</p> <p>10 CPARS, was that a single document?</p> <p>11 <b>A. I believe it is one single document.</b></p> <p>12 MR. WAX: So Counsel, that's called a</p> <p>13 CPAR, not a CPARS. That's why I asked the</p> <p>14 question.</p> <p>15 MS. HOSTETLER: Okay.</p> <p>16 Q. Did you review the interim CPARS from,</p> <p>17 I think, 2015 or thereabouts on this project?</p> <p>18 <b>A. I reviewed two, yes.</b></p> <p>19 MS. HOSTETLER: Can you show the</p> <p>20 witness Exhibit 27?</p> <p>21 Q. So you're looking at what was</p> <p>22 previously marked as Exhibit 27 to these</p>	31	<p>1 Q. Do you -- do you recollect the</p> <p>2 substance of that printout in Exhibit 27? I want</p> <p>3 to make sure we're talking about the same</p> <p>4 document. Because there was some issue with</p> <p>5 Ms. Neal as to whether or not this was the proper</p> <p>6 document.</p> <p>7 MR. WAX: I didn't hear the verb. Did</p> <p>8 you say reckon or recognized?</p> <p>9 THE REPORTER: Recollect.</p> <p>10 <b>A. It looks pretty much the same. I</b></p> <p>11 <b>can't be sure.</b></p> <p>12 Q. Ms. Neal thought that she had modified</p> <p>13 the quality section on page three of seven. Did</p> <p>14 you see a version different than what is before</p> <p>15 you now with regard to that quality section?</p> <p>16 <b>A. I can't really say without comparing</b></p> <p>17 <b>the two.</b></p> <p>18 Q. She thought that she had added</p> <p>19 something that this issue had been resolved as a</p> <p>20 clerical error?</p> <p>21 <b>A. I don't recognize that.</b></p> <p>22 MR. WAX: Are we looking at the same</p>
30	<p>1 depositions, which is the September 2019</p> <p>2 performance --</p> <p>3 MR. WAX: Can you repeat that, please?</p> <p>4 MS. HOSTETLER: I hadn't finished the</p> <p>5 question, sir.</p> <p>6 MR. WAX: Oh. Sorry.</p> <p>7 MS. HOSTETLER: Let me start again.</p> <p>8 Q. The court reporter has shown you what</p> <p>9 was previously marked as Exhibit 27 to this</p> <p>10 deposition which is a September 30, 2019</p> <p>11 contractor performance assessment report,</p> <p>12 correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. And this is the document -- one of the</p> <p>15 documents that you looked at in preparation for</p> <p>16 today?</p> <p>17 <b>A. Well, not in this form. It's a</b></p> <p>18 <b>different format.</b></p> <p>19 Q. You looked at it, perhaps, online in</p> <p>20 the system?</p> <p>21 <b>A. Well, I looked at a printout of the</b></p> <p>22 <b>actual report.</b></p>	32	<p>1 document? You said three of seven? Oh, I see.</p> <p>2 Sorry.</p> <p>3 Q. Did you discuss these CPARS with</p> <p>4 Ms. Neal?</p> <p>5 <b>A. Not that I recall.</b></p> <p>6 Q. Not before they were issued?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Have you discussed them since?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Did you discuss with Ms. Neal her --</p> <p>11 the substance of her deposition last week?</p> <p>12 <b>A. I talked to her on Friday about the</b></p> <p>13 <b>length of the deposition but not the substance or</b></p> <p>14 <b>content.</b></p> <p>15 Q. Bear with me one minute here. Can you</p> <p>16 explain for me the people on the Guayaquil</p> <p>17 project and who reported to whom?</p> <p>18 <b>A. Well, Dave Skov, as I recall was, the</b></p> <p>19 <b>COR, and some people called him a project</b></p> <p>20 <b>director, but as contracting goes we call him a</b></p> <p>21 <b>COR. And then there were various people</b></p> <p>22 <b>considered OBO architects, engineers maybe, that</b></p>

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9 (33 to 36)

33	<p>1 are working for him and a construction manager</p> <p>2 reporting to him while they're surveilling the</p> <p>3 postage.</p> <p>4 Q. And then who did Mr. Skov report to?</p> <p>5 Did he report to Ms. Neal as the contracting</p> <p>6 officer?</p> <p>7 A. Yeah. Well, he's in charge of the</p> <p>8 project and trying to get it constructed and in</p> <p>9 charge of the quality assurance team. But he</p> <p>10 doesn't necessarily report to Ms. Neal. But</p> <p>11 Ms. Neal is the overall contracting officer and</p> <p>12 then Dave Skov is her representative.</p> <p>13 Q. So explain how that works. Because</p> <p>14 there are two divisions. One is the division</p> <p>15 that you're the chief of and then there's OBO.</p> <p>16 Can you explain how that -- how that hierarchy</p> <p>17 works?</p> <p>18 A. Well, there's OBO, a totally separate</p> <p>19 bureau within the Department of State, who has</p> <p>20 responsibility for maintaining and constructing</p> <p>21 our overseas diplomatic facilities. They have no</p> <p>22 contracting authority. So in order for them to</p>	35	<p>1 multiple boxes?</p> <p>2 MR. WAX: I'm going to object to the</p> <p>3 form.</p> <p>4 A. We're nowhere on this chart.</p> <p>5 Q. Okay. So this is all OBO?</p> <p>6 A. Correct.</p> <p>7 Q. And so there's going to be a separate</p> <p>8 chart like this for your division?</p> <p>9 MR. WAX: I'm going to object to the</p> <p>10 form.</p> <p>11 Q. Is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. So where does Mr. Skov fall within</p> <p>14 this?</p> <p>15 A. He would be off of the Office of</p> <p>16 Construction Management. He would be a subset of</p> <p>17 that.</p> <p>18 Q. So he would fall under this chain?</p> <p>19 A. No, not under the chain, just a little</p> <p>20 line drawn from construction -- from the Office</p> <p>21 of Construction Management down to him. Not in</p> <p>22 the chain because it doesn't flow.</p>
34	<p>1 maintain these facilities, they need contracting</p> <p>2 support. And we are the individuals, AQM,</p> <p>3 acquisition management, are the individuals who</p> <p>4 write the contracts they require to complete</p> <p>5 their mission of maintaining the facilities.</p> <p>6 Q. So there are two divisions with</p> <p>7 reporting upward but shared responsibilities. Is</p> <p>8 that accurate?</p> <p>9 A. No. Because we have responsibility</p> <p>10 for contracts. They have responsibility over the</p> <p>11 buildings.</p> <p>12 Q. So they're not shared, they're</p> <p>13 disparate responsibilities but working together?</p> <p>14 A. Correct.</p> <p>15 MS. HOSTETLER: Can I have -- let's</p> <p>16 mark this.</p> <p>17 (Exhibit 99 marked for identification</p> <p>18 and attached to the transcript.)</p> <p>19 Q. So this is a printout that I found.</p> <p>20 And can you just help me a little bit with where</p> <p>21 you fall on here, where Ms. Neal falls, where</p> <p>22 Mr. Skov falls, into which one of these boxes or</p>	36	<p>1 Q. So he would be -- so we take that box</p> <p>2 and we would put Mr. Skov. And then underneath</p> <p>3 Mr. Skov would be his construction manager and</p> <p>4 the people who work for him and they would also</p> <p>5 fall under that chain under him to that box?</p> <p>6 A. I believe that is a good</p> <p>7 representation.</p> <p>8 Q. All right, thank you.</p> <p>9 So where does Mr. Powell fall on this?</p> <p>10 Do you know Mr. Powell?</p> <p>11 A. He's in our chart, not on this one.</p> <p>12 Q. He's on your side?</p> <p>13 A. Correct.</p> <p>14 Q. Maybe we can find that and that will</p> <p>15 just help me. I appreciate that.</p> <p>16 A. Uh-huh.</p> <p>17 MR. WAX: Are we coming back to this?</p> <p>18 Because I don't want to lose order.</p> <p>19 MS. HOSTETLER: Probably. We'll see</p> <p>20 how it goes.</p> <p>21 Q. So prior to the year in which you</p> <p>22 served as the contracting officer, what was your</p>

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10 (37 to 40)

<p style="text-align: right;">37</p> <p>1 role on the Guayaquil project?</p> <p>2 <b>A. Just talking to Ms. Neal, if she</b></p> <p>3 <b>needed any assistance.</b></p> <p>4 Q. Did you visit the job site?</p> <p>5 <b>A. No, I did not.</b></p> <p>6 Q. Did you receive any reports from the</p> <p>7 job site as to the progress of the work?</p> <p>8 <b>A. Not that I recall.</b></p> <p>9 Q. Did you receive any -- what are called</p> <p>10 WAR reports?</p> <p>11 <b>A. No.</b></p> <p>12 Q. As the CO did you receive any regular</p> <p>13 or periodic reporting about what was happening on</p> <p>14 the job site?</p> <p>15 <b>A. Just from Ms. Neal, as necessary.</b></p> <p>16 Q. Did you review any of the weekly</p> <p>17 reports that Montage submitted to Ms. Neal that</p> <p>18 had photographs and sketches?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Were you aware that Montage's weekly</p> <p>21 reports were on a share drive available to your</p> <p>22 division?</p>	<p style="text-align: right;">39</p> <p>1 visit the job site at all?</p> <p>2 <b>A. No.</b></p> <p>3 Q. How would you describe this project?</p> <p>4 <b>A. A construction project for renovation</b></p> <p>5 <b>of facilities in Guayaquil.</b></p> <p>6 Q. And how would you describe how the</p> <p>7 project progressed?</p> <p>8 <b>A. Based on the information I have, the</b></p> <p>9 <b>project was behind schedule but the work was</b></p> <p>10 <b>completed.</b></p> <p>11 Q. As of today, has the project been</p> <p>12 granted final acceptance?</p> <p>13 <b>A. Not that I know of.</b></p> <p>14 Q. Do you know why?</p> <p>15 <b>A. Because there was work recently being</b></p> <p>16 <b>performed that wasn't completed.</b></p> <p>17 Q. Would you describe this project as</p> <p>18 troubled?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Was it a typical sort of construction</p> <p>21 project for an overseas embassy -- consulate?</p> <p>22 <b>A. A bit more problems than normal, but</b></p>
<p style="text-align: right;">38</p> <p>1 <b>A. They should be on ProjNet, which is a</b></p> <p>2 <b>system that is available to contracting</b></p> <p>3 <b>personnel.</b></p> <p>4 Q. And if they weren't in ProjNet, that</p> <p>5 would be of a concern?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Were you aware that Ms. Neal asked</p> <p>8 Montage to email her weekly reports pretty much</p> <p>9 on a regular basis about the status of the</p> <p>10 project?</p> <p>11 <b>A. No.</b></p> <p>12 Q. When you said most of -- as the CO</p> <p>13 most of your reporting came through Ms. Neal, did</p> <p>14 she give you regular reports as to what was going</p> <p>15 on or was it only if an issue arose that needed</p> <p>16 your attention?</p> <p>17 <b>A. Only if an issue arose that needed my</b></p> <p>18 <b>attention.</b></p> <p>19 Q. And that was true before you were the</p> <p>20 CO as well, correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. As the contracting officer, did you</p>	<p style="text-align: right;">40</p> <p>1 <b>it was successful.</b></p> <p>2 Q. When you say a bit more problems than</p> <p>3 necessary, what were the types of problems that</p> <p>4 would rise to your level that would need your</p> <p>5 attention?</p> <p>6 MR. WAX: I'm going to object to the</p> <p>7 form.</p> <p>8 <b>A. I believe I said than normal, not</b></p> <p>9 <b>necessary. But there were just issues with the</b></p> <p>10 <b>performance of the contractor, where work wasn't</b></p> <p>11 <b>being necessarily performed in accordance with</b></p> <p>12 <b>the required specifications.</b></p> <p>13 Q. Were there problems with the OBO staff</p> <p>14 as well?</p> <p>15 <b>A. I did hear of some problems, yes.</b></p> <p>16 Q. And in fact both sides wanted the</p> <p>17 other side's PD or PM kicked off the job,</p> <p>18 correct?</p> <p>19 <b>A. I think I recall that, yes.</b></p> <p>20 Q. Did you look into those issues to see</p> <p>21 what was happening and what factually --</p> <p>22 <b>A. No. Donna looked into those issues.</b></p>

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11 (41 to 44)

41	<p>1 Q. Did you she report to you any of her</p> <p>2 investigations about -- let's start with Mr. Skov</p> <p>3 and Mr. Wright wanting Montage kicked off this</p> <p>4 project.</p> <p>5 MR. WAX: I'm going to object as to</p> <p>6 the form.</p> <p>7 <b>A. Would you repeat that question?</b></p> <p>8 Q. I'll just restate it again.</p> <p>9 <b>A. Okay.</b></p> <p>10 Q. Did Ms. Neal report to you about her</p> <p>11 investigations when Mr. Skov and Mr. Wright</p> <p>12 wanted various Montage people kicked off the job</p> <p>13 site?</p> <p>14 MR. WAX: I'm going to repeat my</p> <p>15 objection.</p> <p>16 <b>A. I can't really remember.</b></p> <p>17 Q. So sitting here today you don't have a</p> <p>18 recollection of what the facts were that involved</p> <p>19 that?</p> <p>20 <b>A. No, not that good.</b></p> <p>21 Q. Did Ms. Neal report to you when</p> <p>22 Montage sought to have Mr. Skov and Mr. Wright</p>	43	<p>1 MR. WAX: I'm going to object as to</p> <p>2 the form.</p> <p>3 Q. And when you say that they were not</p> <p>4 performing up to the specs, are you referring to</p> <p>5 the RFP specs or the issued for construction</p> <p>6 specs?</p> <p>7 <b>A. The issued for construction specs and</b></p> <p>8 <b>the RFP specs as well. I mean they carry</b></p> <p>9 <b>through.</b></p> <p>10 Q. Well, some of the RFP specs could not</p> <p>11 be modified, correct?</p> <p>12 MR. WAX: I'm going to object to the</p> <p>13 form.</p> <p>14 <b>A. That's correct.</b></p> <p>15 Q. None of the division one could be</p> <p>16 modified, for example, correct?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. But other portions of the</p> <p>19 specifications could be modified through the IDR</p> <p>20 process, correct?</p> <p>21 MR. WAX: Object to the form.</p> <p>22 <b>A. I'm not sure. The regional</b></p>
42	<p>1 kicked off this project?</p> <p>2 MR. WAX: Same objection.</p> <p>3 <b>A. She may have mentioned it but I don't</b></p> <p>4 <b>remember the substance of it.</b></p> <p>5 Q. Were those -- those were not the types</p> <p>6 of issues that would rise up to your level of</p> <p>7 involvement?</p> <p>8 <b>A. If it was something where -- no, it</b></p> <p>9 <b>would not.</b></p> <p>10 Q. You said one of the issues in the</p> <p>11 project was the contractor not performing to the</p> <p>12 specs --</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. -- words to that effect?</p> <p>15 And what specs are you referring to?</p> <p>16 <b>A. The general specifications and</b></p> <p>17 <b>drawings that are in the construction contract.</b></p> <p>18 Q. And you're aware that there are the</p> <p>19 RFP drawings and the RFP specifications and then</p> <p>20 the issued for construction drawings and the</p> <p>21 issued for construction specifications, correct?</p> <p>22 <b>A. Correct.</b></p>	44	<p>1 <b>requirements of the RFP carry through. So if the</b></p> <p>2 <b>contractor is -- if it's a design-build contract,</b></p> <p>3 <b>the contractor still is responsible for</b></p> <p>4 <b>performing all of the requirements in the</b></p> <p>5 <b>original RFP documents.</b></p> <p>6 Q. So then what's the purpose of the</p> <p>7 issued for construction specifications?</p> <p>8 <b>A. In a design-build contract, the</b></p> <p>9 <b>contractor is responsible for developing the</b></p> <p>10 <b>design in accordance with the original RFP specs.</b></p> <p>11 <b>And that is their responsibility. The government</b></p> <p>12 <b>will review the developed specifications or</b></p> <p>13 <b>drawings that the contractor develops, and if</b></p> <p>14 <b>there's anything still missing from the original</b></p> <p>15 <b>RFP specs, the contractor is still required to</b></p> <p>16 <b>perform that work.</b></p> <p>17 Q. But aren't the issued for construction</p> <p>18 specifications approved and accepted by the</p> <p>19 government?</p> <p>20 <b>A. They're accepted by the government.</b></p> <p>21 Q. If there's a conflict between the two,</p> <p>22 what governs?</p>



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12 (45 to 48)

45	<p>1 <b>A. The original --</b></p> <p>2 MR. WAX: I'm going to object.</p> <p>3 <b>A. The original RFP documents.</b></p> <p>4 Q. The original RFP is based upon a maybe</p> <p>5 25 or 30 percent design, thereabout?</p> <p>6 <b>A. I don't know.</b></p> <p>7 Q. Oh, you don't know?</p> <p>8 <b>A. No.</b></p> <p>9 Q. What's your understanding of the IDR</p> <p>10 process? Let me take that back.</p> <p>11 Have you been involved in an IDR</p> <p>12 process.</p> <p>13 <b>A. I have.</b></p> <p>14 Q. So what is that process?</p> <p>15 <b>A. It is the government's quality</b></p> <p>16 <b>assurance program whereby the government can</b></p> <p>17 <b>review the contractor's developed design and</b></p> <p>18 <b>developed specifications and to see if they're</b></p> <p>19 <b>following the general requirements of the</b></p> <p>20 <b>original contract.</b></p> <p>21 Q. Isn't it an iterative process, back</p> <p>22 and forth between the design and the government,</p>	47	<p>1 happen?</p> <p>2 <b>A. The design will be developed. It's</b></p> <p>3 <b>not changes or modifications. It's the</b></p> <p>4 <b>development of the design so that the actual</b></p> <p>5 <b>design can be constructed. You've got to do the</b></p> <p>6 <b>calculations, you've got to do all the</b></p> <p>7 <b>requirements to get up to the 100-percent design</b></p> <p>8 <b>for construction.</b></p> <p>9 Q. Are the RFP specifications</p> <p>10 project-specific?</p> <p>11 <b>A. Some are, some aren't.</b></p> <p>12 Q. But the issued for construction</p> <p>13 specifications are project-specific, correct?</p> <p>14 <b>A. Should be.</b></p> <p>15 Q. So there would be things in the RFP</p> <p>16 specifications that are developed for projects</p> <p>17 all over the world that might not be specific to</p> <p>18 the Guayaquil project?</p> <p>19 <b>A. Well, not being an architect or an</b></p> <p>20 <b>engineer, I would have to say that there are many</b></p> <p>21 <b>requirements in the specifications that are</b></p> <p>22 <b>generic but they apply to all projects.</b></p>
46	<p>1 as to what's actually going to be built?</p> <p>2 MR. WAX: I'm going to object to the</p> <p>3 form.</p> <p>4 <b>A. No. It is a review of the</b></p> <p>5 <b>contractor's development of the documentation.</b></p> <p>6 Q. And by review, you mean the</p> <p>7 government's just sitting there saying, well,</p> <p>8 we'll look at anything you give us or is it an</p> <p>9 interactive process?</p> <p>10 MR. WAX: I'm going to object to the</p> <p>11 form.</p> <p>12 <b>A. It's an interactive process.</b></p> <p>13 Q. And issues with regard to the initial</p> <p>14 design are worked out during that process?</p> <p>15 <b>A. Well, the initial design isn't fully</b></p> <p>16 <b>developed. So the contractor is responsible for</b></p> <p>17 <b>developing the design to 100-percent completion</b></p> <p>18 <b>so that work can be performed.</b></p> <p>19 Q. Is it fair to say that when you take a</p> <p>20 design from a smaller percentage to 100-percent</p> <p>21 completion, there's going to be changes and</p> <p>22 modifications with that design that are going to</p>	48	<p>1 Q. Are you aware of any specifications</p> <p>2 that were enforced against Montage on the</p> <p>3 Guayaquil project --</p> <p>4 MR. WAX: I'm going to object to the</p> <p>5 form.</p> <p>6 MS. HOSTETLER: Well, can you at</p> <p>7 least, sir, let me get the question out?</p> <p>8 MR. WAX: I'm sorry. There was a</p> <p>9 pause so I thought it was done. But I apologize</p> <p>10 if I interrupted you.</p> <p>11 MS. HOSTETLER: I lost my train of</p> <p>12 thought, which I think was the point. Can you</p> <p>13 read back the question.</p> <p>14 MR. WAX: Oh, that's unnecessary. If</p> <p>15 you want to have an argument, I'm really capable</p> <p>16 of that.</p> <p>17 (The Reporter read from the record as</p> <p>18 follows: "Q. Are you aware of any</p> <p>19 specifications that were enforced against Montage</p> <p>20 on the Guayaquil project" --)</p> <p>21 BY MS. HOSTETLER:</p> <p>22 Q. Are you aware of any specifications</p>

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13 (49 to 52)

49	<p>1 that were enforced against Montage that were not</p> <p>2 in either the RFP specs or the issued for</p> <p>3 construction specs?</p> <p>4 MR. WAX: I'm going to object to the</p> <p>5 form.</p> <p>6 <b>A. No, I'm not.</b></p> <p>7 Q. Would that be proper?</p> <p>8 MR. WAX: I'm going to object to the</p> <p>9 form of the question.</p> <p>10 <b>A. Only if it was modified into the</b></p> <p>11 <b>contract or in some kind of way it was modified.</b></p> <p>12 Q. Mr. Vivian, the court reporter has</p> <p>13 handed you what was previously marked as</p> <p>14 Exhibit 46 to these depositions. That is a</p> <p>15 contracting officer's final decision dated</p> <p>16 October 31, 2018 signed by you. Is this one of</p> <p>17 the final decisions that you issued wearing your</p> <p>18 hat as contracting officer on the Guayaquil</p> <p>19 project?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And what role, if any, did Ms. Neal</p> <p>22 play in the preparation of this final decision?</p>	51
50	<p>1 submitted by Montage?</p> <p>2 <b>A. I don't recall, but it says so here.</b></p> <p>3 <b>So perhaps that email is in my group somewhere.</b></p> <p>4 Q. I do not have those zipped and</p> <p>5 attached files and they're not in the Rule 4</p> <p>6 file. So we would ask, if you can find them,</p> <p>7 provide them to your counsel and counsel will</p> <p>8 provide those to us.</p> <p>9 (Document/data request.)</p> <p>10 MR. WAX: Hang on.</p> <p>11 Q. Do you have --</p> <p>12 MR. WAX: Can you hang on one second?</p> <p>13 I'm going to make a note so I can do what you</p> <p>14 ask, okay? Because this is Jeff's case and not</p> <p>15 my case. And I will forget. You want the</p> <p>16 attachment to Exhibit 100 from -- the part from</p> <p>17 Neal to Vivian, right?</p> <p>18 MS. HOSTETLER: Yes, sir.</p> <p>19 Q. Do you recollect having received or</p> <p>20 reviewed some draft final decisions or</p> <p>21 recommendations from Ms. Neal as part of your</p> <p>22 process?</p>	52



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14 (53 to 56)

53	<p>1 <b>A. No, I don't.</b></p> <p>2 Q. Was Ms. Neal taking the initial cut at</p> <p>3 preparing the final decision?</p> <p>4 MR. WAX: I'm going to object to form.</p> <p>5 <b>A. It would have been a team effort.</b></p> <p>6 <b>Dave Skov, her and working up drafts and sending</b></p> <p>7 <b>them for the necessary reviews and clearances.</b></p> <p>8 MS. HOSTETLER: And so I would add,</p> <p>9 Mr. Waxman, because I haven't seen any drafts by</p> <p>10 Ms. Neal, and she testified that she thought she</p> <p>11 had some, she wasn't sure. So to the extent that</p> <p>12 Ms. Neal prepared drafts of the final decisions,</p> <p>13 we would like those?</p> <p>14 MR. WAX: Sure, hang on. Just so I</p> <p>15 don't get it wrong, you want drafts to the final</p> <p>16 decisions from Neal?</p> <p>17 MS. HOSTETLER: Drafts or</p> <p>18 recommendations, whatever they were.</p> <p>19 MR. WAX: Okay. Thank you.</p> <p>20 (Document/data request.)</p> <p>21 BY MS. HOSTETLER:</p> <p>22 Q. Ms. Neal's email implies that she has</p>	55	<p>1 Q. Was this the first time that Ms. Neal</p> <p>2 was assisting as part of the team with rendering</p> <p>3 final decisions?</p> <p>4 MR. WAX: I'm going to object to the</p> <p>5 form.</p> <p>6 <b>A. I don't believe so.</b></p> <p>7 Q. If it wasn't her first time why would</p> <p>8 it be necessary for you to send her a draft?</p> <p>9 MR. WAX: I'm going to object to form.</p> <p>10 Q. Excuse me. It wasn't draft, it was</p> <p>11 sample format. I apologize.</p> <p>12 <b>A. We always shared formats. They're all</b></p> <p>13 <b>on the share drive.</b></p> <p>14 Q. This was in June of 2018. Do you</p> <p>15 recall when the claims by Montage were submitted?</p> <p>16 MR. WAX: Object to the form.</p> <p>17 <b>A. I do not.</b></p> <p>18 Q. Do you recall any urgency with trying</p> <p>19 to get a response out on Montage's claims?</p> <p>20 MR. WAX: Object to the form.</p> <p>21 <b>A. Well, the FAR gives us 60 days to</b></p> <p>22 <b>respond to a contractor's claim unless additional</b></p>
54	<p>1 completed several -- either final decisions,</p> <p>2 drafts or recommendations. It's hard actually</p> <p>3 for me to understand. Do you know if those got</p> <p>4 factored into your final decision?</p> <p>5 MR. WAX: I'm going to object to the</p> <p>6 form.</p> <p>7 <b>A. I don't recall seeing any other</b></p> <p>8 <b>documentation.</b></p> <p>9 Q. When you tell Ms. Neal that you will</p> <p>10 send her a sample format, what is a sample</p> <p>11 format? What were you referring to?</p> <p>12 <b>A. I believe a sample format of the</b></p> <p>13 <b>contracting officer's final decision.</b></p> <p>14 Q. And is that sample format consistent</p> <p>15 with what we were looking at in Exhibit 46?</p> <p>16 <b>A. Just the first paragraph and the final</b></p> <p>17 <b>paragraph.</b></p> <p>18 Q. Because it would be fair to say that</p> <p>19 in between the first paragraph and the last</p> <p>20 paragraph it would depend upon what claims are</p> <p>21 being discussed, correct?</p> <p>22 <b>A. Correct, yes.</b></p>	56	<p>1 <b>time is identified before the original 60 days</b></p> <p>2 <b>expires. So there's always some urgency, but I</b></p> <p>3 <b>don't recall anything specific.</b></p> <p>4 Q. You mentioned Mr. Skov was on your</p> <p>5 team working on this as well. Did Mr. Skov</p> <p>6 provide recommendations to you?</p> <p>7 <b>A. Not to me. The team was Donna and</b></p> <p>8 <b>Mr. Skov and other people that would provide her</b></p> <p>9 <b>advice. But not to myself, no.</b></p> <p>10 Q. So help me understand what just said.</p> <p>11 You've got a team of Donna -- Donna Neal, David</p> <p>12 Skov and other people assisting them, correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. So let's start with, do you know who</p> <p>15 those other people are?</p> <p>16 <b>A. Well, it would be counsel. And</b></p> <p>17 <b>there's a contracting officer's representative,</b></p> <p>18 <b>an alternate contracting officer's --</b></p> <p>19 <b>administrative? It's the ACOR that works in OBO</b></p> <p>20 <b>in SA6. So that person probably would have been</b></p> <p>21 <b>assisting Donna as well.</b></p> <p>22 Q. And who is that person?</p>

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15 (57 to 60)

57	<p>1 <b>A. I don't recall.</b></p> <p>2 Q. Who would know who that person is?</p> <p>3 <b>A. Donna should know.</b></p> <p>4 MR. WAX: Can you let me know when you</p> <p>5 have a logical break so we can take that? I have</p> <p>6 a voice-mail.</p> <p>7 MS. HOSTETLER: Okay.</p> <p>8 Q. So you have this team of Donna and</p> <p>9 David -- Donna Neal, David Skov and the people</p> <p>10 who are assisting them. Between those two, who</p> <p>11 reported to you, if either of them did, as far as</p> <p>12 what the recommendation should be for the</p> <p>13 contracting officer's final decision?</p> <p>14 <b>A. I believe Donna, but I'm not sure.</b></p> <p>15 Q. Was that in writing or was it oral?</p> <p>16 <b>A. It would have been the draft.</b></p> <p>17 MS. HOSTETLER: Sir, we can take a</p> <p>18 break.</p> <p>19 MR. WAX: Oh, thanks.</p> <p>20 (A recess was taken.)</p> <p>21 (Exhibit 101 marked for identification</p> <p>22 and attached to the transcript.)</p>	59	<p>1 MS. HOSTETLER: So Dennis is a lawyer</p> <p>2 as well as John?</p> <p>3 MR. WAX: Right. I'll answer that.</p> <p>4 Dennis is the head of LBA. And John is one of</p> <p>5 the attorneys.</p> <p>6 MS. HOSTETLER: Okay.</p> <p>7 MR. WAX: So if we could just move on,</p> <p>8 I would appreciate it.</p> <p>9 MS. HOSTETLER: Okay. I was thinking</p> <p>10 this might be the OBO person.</p> <p>11 MR. WAX: No, no, I understand that.</p> <p>12 And I wasn't suggesting otherwise other than I</p> <p>13 don't know what your arrangement is with Jeff</p> <p>14 about clawbacks and all that good stuff.</p> <p>15 (Exhibit 102 marked for identification</p> <p>16 and attached to the transcript.)</p> <p>17 Q. Showing you what's been marked as</p> <p>18 Exhibit 102 to these depositions, a June 22, 2018</p> <p>19 letter from Donna Neal to Sina at Montage. And</p> <p>20 let me know when you're ready to -- you've seen</p> <p>21 this document before?</p> <p>22 <b>A. Not that I remember.</b></p>
58	<p>1 BY MS. HOSTETLER:</p> <p>2 Q. Mr. Vivian, I'll show you what's been</p> <p>3 marked as Exhibit 101 to your deposition, which</p> <p>4 is an email string between you and Ms. Neal in</p> <p>5 July of 2018. Let me know when you're ready to</p> <p>6 answer questions.</p> <p>7 MR. WAX: And while he's doing that, I</p> <p>8 would like to ask for you to speak to Jeff about</p> <p>9 this event.</p> <p>10 MS. HOSTETLER: Okay.</p> <p>11 <b>A. I'm ready.</b></p> <p>12 Q. So who is Mr. Sawyer?</p> <p>13 <b>A. Mr. Sawyer is one of the lawyers</b></p> <p>14 <b>working, attorneys.</b></p> <p>15 MR. WAX: So you see the point? Can</p> <p>16 we just move on and let you guys work it out?</p> <p>17 MS. HOSTETLER: Yes. But I'll only</p> <p>18 ask you about that top --</p> <p>19 MR. WAX: Well, every one on this is a</p> <p>20 lawyer.</p> <p>21 MS. HOSTETLER: Oh, is that right?</p> <p>22 MR. WAX: Yeah.</p>	60	<p>1 Q. Let me know when you're ready to</p> <p>2 answer questions.</p> <p>3 <b>A. I'm ready.</b></p> <p>4 Q. So this is a letter where the</p> <p>5 government's telling Montage that they need more</p> <p>6 time to respond to their claims, correct?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. Does this mean that Ms. Neal is</p> <p>9 responsible for responding to these claims</p> <p>10 because she's the one asking for more time?</p> <p>11 <b>A. She's the one responsible for drafting</b></p> <p>12 <b>the decision, working with OBO to work up the</b></p> <p>13 <b>decision. She can't sign it.</b></p> <p>14 Q. Despite the fact that Ms. Neal lost</p> <p>15 her warrant as CO on this project, did you</p> <p>16 continue to rely heavily upon her and her</p> <p>17 knowledge of this project in the preparation of</p> <p>18 the final decisions?</p> <p>19 <b>A. I did, yes.</b></p> <p>20 Q. Do you know why the -- why Ms. Neal</p> <p>21 had not been able to draft responses to those</p> <p>22 claims that are set forth in Exhibit 102?</p>

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16 (61 to 64)

<p style="text-align: right;">61</p> <p>1 MR. WAX: I'm going to object to the</p> <p>2 form.</p> <p>3 <b>A. Other than her other administrative</b></p> <p>4 <b>workload, no.</b></p> <p>5 Q. These were -- were these claims that</p> <p>6 had been submitted to the contracting officer</p> <p>7 representative during the course of the project</p> <p>8 and denied?</p> <p>9 <b>A. Not as claims, maybe as requests for</b></p> <p>10 <b>equitable adjustment.</b></p> <p>11 Q. Fair enough. That's a better use of</p> <p>12 the word. So let me clean up my question. Which</p> <p>13 is, were these requests for equitable adjustments</p> <p>14 submitted to the contracting officer</p> <p>15 representative, Mr. Skov, during the course of</p> <p>16 this project and denied?</p> <p>17 <b>A. I believe they were.</b></p> <p>18 MR. WAX: If I could just interject so</p> <p>19 that we don't all get confused. This says</p> <p>20 certified claims, which is not a request for an</p> <p>21 equitable adjustment.</p> <p>22 Q. And at the time you prepared your</p>	<p style="text-align: right;">63</p> <p>1 the final decision?</p> <p>2 <b>A. No. I believe this is the final that</b></p> <p>3 <b>I received, when I signed it. I don't think I</b></p> <p>4 <b>sent it back for any adjustments.</b></p> <p>5 Q. So if I understand, you received what</p> <p>6 is contained in Exhibit 46 as a draft and signed</p> <p>7 it as is?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. Other than reading the information</p> <p>10 contained in Exhibit 46, what else did you do to</p> <p>11 assure yourself that the decision was accurate?</p> <p>12 <b>A. Just any information that Donna and I</b></p> <p>13 <b>had spoke about prior to my actually receiving</b></p> <p>14 <b>the document.</b></p> <p>15 Q. And what information did you and</p> <p>16 Ms. Neal speak about prior to receiving the draft</p> <p>17 of what is now Exhibit 46?</p> <p>18 <b>A. Maybe some particles about each one of</b></p> <p>19 <b>the REAs that are in this sealed decision that is</b></p> <p>20 <b>marked as Exhibit 46, but I don't recall.</b></p> <p>21 Q. Is there -- that was an oral</p> <p>22 conversation?</p>
<p style="text-align: right;">62</p> <p>1 response, Exhibit 46, to -- and this one is</p> <p>2 referring to the 19 claims -- did you have in</p> <p>3 your possession or at your -- did you have in</p> <p>4 your possession the denial by the COR of the REA</p> <p>5 claims?</p> <p>6 MR. WAX: I'm going to object to the</p> <p>7 form.</p> <p>8 <b>A. I did not.</b></p> <p>9 Q. Did you review those denials as part</p> <p>10 of your analysis of -- that led to the</p> <p>11 contracting officer's final decision, Exhibit 46?</p> <p>12 MR. WAX: I repeat my objection.</p> <p>13 <b>A. No. The team would have looked at all</b></p> <p>14 <b>of the pertinent information and offered the</b></p> <p>15 <b>final decision to me.</b></p> <p>16 Q. What was -- what was your process in</p> <p>17 coming to the final decision that's set forth in</p> <p>18 Exhibit 46?</p> <p>19 <b>A. To review the final documentation and,</b></p> <p>20 <b>if it was acceptable, to sign it.</b></p> <p>21 Q. And when you say review the final</p> <p>22 documentation, are you referring to a draft of</p>	<p style="text-align: right;">64</p> <p>1 <b>A. As far as I know, yes.</b></p> <p>2 Q. Did you take notes?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Did she have notes with her when she</p> <p>5 was discussing this with you?</p> <p>6 <b>A. I don't recall.</b></p> <p>7 Q. Did you have any oral conversations</p> <p>8 with Mr. Skov?</p> <p>9 <b>A. No, I did not.</b></p> <p>10 Q. So is it fair to say that other than a</p> <p>11 conversation with Ms. Neal and reviewing what was</p> <p>12 presented to you as Exhibit 46 in draft, you did</p> <p>13 nothing else as part of your analysis in</p> <p>14 rendering the contracting officer's final</p> <p>15 decision?</p> <p>16 MR. WAX: I'm going to object to the</p> <p>17 form.</p> <p>18 <b>A. No. That was Donna's responsibility</b></p> <p>19 <b>to work with the team and they gave me the final.</b></p> <p>20 Q. And because there was an objection,</p> <p>21 let me ask it maybe a little cleaner.</p> <p>22 Other than reading and reviewing what</p>

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17 (65 to 68)

<p style="text-align: right;">65</p> <p>1 you signed as Exhibit 46, and a conversation with</p> <p>2 Ms. Neal prior to receipt of that document, did</p> <p>3 you do anything else as part of your analysis and</p> <p>4 decision-making as the contracting officer?</p> <p>5 MR. WAX: Same objection.</p> <p>6 <b>A. Not that I recall.</b></p> <p>7 Q. How long was your conversation with</p> <p>8 Ms. Neal?</p> <p>9 <b>A. I don't know.</b></p> <p>10 Q. Was it a phone conversation or</p> <p>11 face-to-face conversation?</p> <p>12 <b>A. I don't recall. We had both.</b></p> <p>13 Q. Do you recall if this was a lengthy</p> <p>14 discussion where you went through each one of the</p> <p>15 individual items listed in Exhibit 46?</p> <p>16 <b>A. I do not recall.</b></p> <p>17 Q. Do you recall any one of -- which, if</p> <p>18 any, of the individual claims set forth in</p> <p>19 Exhibit 46 you spoke with Ms. Neal about before</p> <p>20 you signed this?</p> <p>21 <b>A. No, I don't.</b></p> <p>22 Q. Did you review any recommendations on</p>	<p style="text-align: right;">67</p> <p>1 Mr. Skov. Do you know any other names of the</p> <p>2 team that Ms. Neal worked with that led to your</p> <p>3 final decision?</p> <p>4 <b>A. Names, no.</b></p> <p>5 Q. Anything to help identify them, as far</p> <p>6 as what their --</p> <p>7 <b>A. Like I said, I believe she --</b></p> <p>8 Q. -- what types of technical --</p> <p>9 MR. WAX: Let her finish.</p> <p>10 Q. -- what types of technical</p> <p>11 information?</p> <p>12 <b>A. I believe she would have talked to</b></p> <p>13 <b>ACOR, but I don't know that person's name.</b></p> <p>14 Q. Anyone else? Any other positions that</p> <p>15 you can recall that she would have spoken to?</p> <p>16 <b>A. No.</b></p> <p>17 Q. So it's fair to say that you did not</p> <p>18 undertake any individual analysis or independent</p> <p>19 analysis of these claims other than what's set</p> <p>20 forth in Exhibit 46?</p> <p>21 MR. WAX: I'm going to object to the</p> <p>22 form.</p>
<p style="text-align: right;">66</p> <p>1 a claim-by-claim basis other than -- let me</p> <p>2 just --</p> <p>3 <b>A. Not that I recall.</b></p> <p>4 Q. So you've got what's Exhibit 46, had a</p> <p>5 conversation with Ms. Neal and you signed</p> <p>6 Exhibit 46. Is that --</p> <p>7 MR. WAX: Object to the --</p> <p>8 Q. Is that fair?</p> <p>9 MR. WAX: I'm going to object to the</p> <p>10 form.</p> <p>11 <b>A. I'm not sure if it was just one</b></p> <p>12 <b>conversation, but yes, I did sign this document.</b></p> <p>13 Q. Were your conversations with Ms. Neal</p> <p>14 just the two of you or were there others involved</p> <p>15 in those? And the conversations I'm talking</p> <p>16 about are conversations leading to Exhibit 46.</p> <p>17 <b>A. Just her and I.</b></p> <p>18 Q. Did you consult any technical subject</p> <p>19 matter experts?</p> <p>20 <b>A. That would have been the team that she</b></p> <p>21 <b>worked with.</b></p> <p>22 Q. And do you know -- we've mentioned</p>	<p style="text-align: right;">68</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. Did you personally look at any of the</p> <p>3 drawings or specifications as they related to</p> <p>4 these claims?</p> <p>5 <b>A. Not that I recall.</b></p> <p>6 Q. Is the ACOR that you referenced, is</p> <p>7 that the construction executive or is that a</p> <p>8 different position?</p> <p>9 <b>A. A different position. No, I'm sorry.</b></p> <p>10 <b>That is correct. They call it construction</b></p> <p>11 <b>executive and another term that I forget right</b></p> <p>12 <b>now. But that is the same person.</b></p> <p>13 Q. And you don't recall sitting here</p> <p>14 today the name of that person?</p> <p>15 <b>A. No, I do not.</b></p> <p>16 Q. Referring back to Exhibit 46, is it</p> <p>17 the government's position that none of the</p> <p>18 19 claims involve work outside of the contract</p> <p>19 requirements?</p> <p>20 <b>A. And as I -- certainly most of them,</b></p> <p>21 <b>but I believe some of them are not fully</b></p> <p>22 <b>supported as well.</b></p>

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18 (69 to 72)

69	<p>1 Q. Explain -- can you explain what you</p> <p>2 just said?</p> <p>3 <b>A. The documentation that is included in</b></p> <p>4 <b>the claim that was submitted to the government</b></p> <p>5 <b>wasn't complete enough to perform a total</b></p> <p>6 <b>analysis.</b></p> <p>7 Q. So if I understand you, it's fair to</p> <p>8 say that a number of these claims the government</p> <p>9 determined was not extra work, and there were</p> <p>10 some claims that the government just wasn't able</p> <p>11 to tell. Is that what your testimony is?</p> <p>12 <b>A. That's correct.</b></p> <p>13 Q. So which of the claims did the</p> <p>14 government determine was -- was just not extra</p> <p>15 work versus which of the claims they weren't able</p> <p>16 to determine?</p> <p>17 <b>A. Well, each one has a self -- a little</b></p> <p>18 <b>description of the reason why it's denied.</b></p> <p>19 Q. And I'm trying to find out if the</p> <p>20 government looked at this and said which of these</p> <p>21 claims -- well, strike that. Let's just run</p> <p>22 through each one of them.</p>	71	<p>1 Q. Were you ever advised by anyone</p> <p>2 whether or not there was -- whether any of these</p> <p>3 claims involved out of scope work?</p> <p>4 MR. WAX: I'm going to object, and to</p> <p>5 the extent -- because we haven't spoken about</p> <p>6 this. To the extent that anything in your answer</p> <p>7 involves discussions with counsel, you're not to</p> <p>8 disclose those.</p> <p>9 Q. Other than communications you may have</p> <p>10 had with counsel, did Ms. Neal or Mr. Skov or</p> <p>11 anyone else tell you that some of the claims that</p> <p>12 were submitted to you for a final decision</p> <p>13 involved out-of-scope work?</p> <p>14 <b>A. I don't recall.</b></p> <p>15 Q. Were you aware of any effort by</p> <p>16 Ms. Neal or Mr. Skov to ensure that the claims --</p> <p>17 strike that. That's just a bad question.</p> <p>18 (Exhibit 103 marked for identification</p> <p>19 and attached to the transcript.)</p> <p>20 Q. Mr. Vivian, I'm handing you what's</p> <p>21 been marked as Exhibit 103 to these depositions.</p> <p>22 And as you can see, it's an email that you were</p>
70	<p>1 Actually, before we get through each</p> <p>2 one, did you request any additional information</p> <p>3 from Montage prior to issuing the contracting</p> <p>4 officer's final decision?</p> <p>5 <b>A. I did not.</b></p> <p>6 Q. Did you direct Ms. Neal or Mr. Skov to</p> <p>7 obtain additional information from Montage?</p> <p>8 <b>A. I did not.</b></p> <p>9 Q. Do you know if they requested</p> <p>10 additional information?</p> <p>11 <b>A. I don't know.</b></p> <p>12 Q. If the government wasn't able to</p> <p>13 determine what the claim was, as you say for some</p> <p>14 of these, you just weren't able to determine</p> <p>15 whether there was extra work or not, why didn't</p> <p>16 the government reach out to Montage and say --</p> <p>17 and ask them questions?</p> <p>18 MR. WAX: I'm going to object to the</p> <p>19 form.</p> <p>20 <b>A. Because the contractor submitted a</b></p> <p>21 <b>claim and it's now our responsibility to review</b></p> <p>22 <b>the submission and either accept it or deny it.</b></p>	72	<p>1 not copied on. It's between Mr. Wright, with his</p> <p>2 personal email account, and Mr. Skov. And I'll</p> <p>3 let you read it and I just have one or two</p> <p>4 questions.</p> <p>5 <b>A. (Reviewing.) Okay.</b></p> <p>6 Q. Mr. Skov is telling Mr. Wright that</p> <p>7 Montage might have found a leverage point on an</p> <p>8 item where scope might be missing. Are you aware</p> <p>9 of any issue that was identified to you by</p> <p>10 Mr. Skov or anyone else that there was some scope</p> <p>11 missing?</p> <p>12 MR. WAX: I'm going to object to the</p> <p>13 form.</p> <p>14 <b>A. No.</b></p> <p>15 Q. If you would look back to Exhibit 46,</p> <p>16 your final decision. On the second page there's</p> <p>17 a reference about halfway through that first</p> <p>18 paragraph that says, "OBO on-site personnel were</p> <p>19 not warranted contracting officers nor authorized</p> <p>20 to change the terms of the contract by the</p> <p>21 contracting officer."</p> <p>22 Do you see that, sir?</p>



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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1     <b>A. Yes, I do.</b></p> <p>2     Q. And was that true of Mr. Skov as well?</p> <p>3     <b>A. As far as I recall, yes.</b></p> <p>4     Q. Were there issues with Mr. Skov on</p> <p>5 this project with regard to his authority?</p> <p>6     <b>A. Not that I remember, no.</b></p> <p>7         MR. WAX: I hope you appreciate that I</p> <p>8 got up extra early to make it all the way here.</p> <p>9     Q. Was there -- weren't issues raised to</p> <p>10 your attention that Mr. Skov was issuing cure</p> <p>11 notices and acting in a ways that were beyond his</p> <p>12 authority as a contracting officer</p> <p>13 representative?</p> <p>14    <b>A. I remember something about him issuing</b></p> <p>15 <b>a cure notice when only a contracting officer can</b></p> <p>16 <b>issue a cure notice.</b></p> <p>17         (Exhibit 104 marked for identification</p> <p>18 and attached to the transcript.)</p> <p>19    Q. So --</p> <p>20         MR. WAX: Will you give me a second?</p> <p>21         MS. HOSTETLER: Yeah. I'm just going</p> <p>22 to put this on the record.</p>	<p style="text-align: right;">75</p> <p>1     Q. And there's also a reference in here</p> <p>2 where -- does this refresh your recollection that</p> <p>3 Mr. Skov was trying to get Montage thrown off</p> <p>4 this project?</p> <p>5     <b>A. I don't have that recollection.</b></p> <p>6     Q. So when you say to Mr. Skov, "We will</p> <p>7 not begin proceeding to terminate the contract in</p> <p>8 August 2017 because the contractor's 157 days</p> <p>9 begin" -- I think you mean behind schedule, you</p> <p>10 didn't understand that Mr. Skov was trying to get</p> <p>11 Montage thrown off this project?</p> <p>12    <b>A. That's correct, yes.</b></p> <p>13    Q. Were you worried in July of 2016 that</p> <p>14 the contractor was 157 days behind schedule?</p> <p>15    <b>A. It's an issue, yes.</b></p> <p>16    Q. And were you aware at this point that</p> <p>17 there had been some time extensions filed where</p> <p>18 the contractor was requesting an extension of</p> <p>19 time?</p> <p>20    <b>A. Oh, TIAs, yes.</b></p> <p>21    Q. Did you ask to see them?</p> <p>22    <b>A. No.</b></p>
<p style="text-align: right;">74</p> <p>1     Q. The court reporter's shown you what's</p> <p>2 marked as Exhibit 104, which is an email string</p> <p>3 at the top between you and Mr. Skov, copied to</p> <p>4 several other people. Let me know when you're</p> <p>5 ready to answer a few questions on that.</p> <p>6     <b>A. I'm done.</b></p> <p>7     Q. So does this refresh your recollection</p> <p>8 that Mr. Skov, as a COR, was issuing at least one</p> <p>9 cure notice to Montage during the course of this</p> <p>10 project?</p> <p>11    <b>A. He'd issued a document that was called</b></p> <p>12 <b>a cure notice. I don't know if it was a FAR part</b></p> <p>13 <b>49 actual cure notice.</b></p> <p>14    Q. Fair enough. He attempted to issue</p> <p>15 what he said was a cure notice. Fair enough?</p> <p>16    <b>A. Correct.</b></p> <p>17    Q. And this was brought to your attention</p> <p>18 and you immediately made sure that he knew that</p> <p>19 that was not within the scope of his authority,</p> <p>20 but was within the scope of Ms. Neal's authority,</p> <p>21 correct?</p> <p>22    <b>A. Correct.</b></p>	<p style="text-align: right;">76</p> <p>1     Q. Did you ask what the status of those</p> <p>2 were?</p> <p>3     <b>A. I did not.</b></p> <p>4     Q. Did you review the documents that</p> <p>5 Mr. Skov referenced to see if it warranted a cure</p> <p>6 notice?</p> <p>7         MR. WAX: I'm going to object to the</p> <p>8 form.</p> <p>9     <b>A. I did not.</b></p> <p>10    Q. Did you leave that in Ms. Neal's</p> <p>11 capable hands to resolve?</p> <p>12    <b>A. I did.</b></p> <p>13    Q. Were there any other issues that you</p> <p>14 can recollect about Mr. Skov's authority on this</p> <p>15 project?</p> <p>16    <b>A. Not that I recall, no.</b></p> <p>17         (Exhibit 105 marked for identification</p> <p>18 and attached to the transcript.)</p> <p>19    Q. I hand you what's been marked as</p> <p>20 Exhibit 105, which is another email string</p> <p>21 between you and Mr. Skov and others, October 3 of</p> <p>22 2016. And let me know when you're ready to</p>

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20 (77 to 80)

77	<p>1 answer a few questions.</p> <p>2 <b>A. (Reviewing.) I'm done.</b></p> <p>3 MR. WAX: Hang on one second.</p> <p>4 THE WITNESS: Okay.</p> <p>5 (Exhibit 106 marked for identification</p> <p>6 and attached to the transcript.)</p> <p>7 MR. WAX: Inasmuch as LBA is mentioned</p> <p>8 in this you're not to discuss anything that was</p> <p>9 discussed with them.</p> <p>10 BY MS. HOSTETLER:</p> <p>11 Q. So does this refresh your recollection</p> <p>12 that there may have been other issues on the</p> <p>13 Guayaquil project regarding Mr. Skov and what he</p> <p>14 thought his limits of authority were?</p> <p>15 <b>A. Yes. This particular email, yes,</b></p> <p>16 <b>correct.</b></p> <p>17 Q. And in this, if we go back a ways,</p> <p>18 help me understand. Mr. Skov is saying that his</p> <p>19 position as COR gives him greater authority than</p> <p>20 what you and Ms. Neal thought he had. Is that</p> <p>21 fair?</p> <p>22 MR. WAX: I'm going to object as to</p>	79	<p>1 Q. Make sure I understand what you're</p> <p>2 saying, is that in fact Mr. Skov did have greater</p> <p>3 authority than you thought because of what was in</p> <p>4 the division one specs. Is that --</p> <p>5 <b>A. No.</b></p> <p>6 Q. So I apologize. I'm just not</p> <p>7 understanding.</p> <p>8 <b>A. There's two different terms. There's</b></p> <p>9 <b>the project director and then there's the</b></p> <p>10 <b>contracting officer's representative. Project</b></p> <p>11 <b>director is granted by OBO. They have no</b></p> <p>12 <b>contract authority and don't have any authority</b></p> <p>13 <b>to delegate contracting authority to a project</b></p> <p>14 <b>director.</b></p> <p>15 <b>The contracting officer has the</b></p> <p>16 <b>authority to delegate some responsibilities to a</b></p> <p>17 <b>COR. And in doing so that it doesn't pass</b></p> <p>18 <b>automatically to the project director because the</b></p> <p>19 <b>project director comes from a different</b></p> <p>20 <b>authority.</b></p> <p>21 Q. But Mr. Skov wearing his COR hat had</p> <p>22 some additional contracting authority on this</p>
78	<p>1 form.</p> <p>2 <b>A. No, the project director is a position</b></p> <p>3 <b>that's assigned by OBO to their personnel. And</b></p> <p>4 <b>as such, then he's authorized to work with post</b></p> <p>5 <b>and oversee the project for OBO.</b></p> <p>6 <b>As a contracting officer's</b></p> <p>7 <b>representative, that title and the letter that we</b></p> <p>8 <b>issue appointing him as a contracting officer's</b></p> <p>9 <b>representative gives him authority to work on the</b></p> <p>10 <b>government's behalf under the terms of the</b></p> <p>11 <b>contract.</b></p> <p>12 Q. So there's a discussion in here about</p> <p>13 whether or not there needs to be an</p> <p>14 administrative modification to the contract.</p> <p>15 What was the -- what would the administration</p> <p>16 modification be?</p> <p>17 <b>A. It would be to identify the fact that</b></p> <p>18 <b>in division one OBO is placing -- it's</b></p> <p>19 <b>acronyms -- project director/COR. So all of the</b></p> <p>20 <b>authority that is granted a COR is not provided</b></p> <p>21 <b>to the project director. So at the time I</b></p> <p>22 <b>considered the slash to be inappropriate.</b></p>	80	<p>1 project, correct?</p> <p>2 <b>A. He had additional -- he had</b></p> <p>3 <b>contracting authority assigned to him by the CO,</b></p> <p>4 <b>yes.</b></p> <p>5 Q. So why was the administrative</p> <p>6 modification not issued?</p> <p>7 <b>A. Because in the end I determined that</b></p> <p>8 <b>administrative modification wasn't necessary,</b></p> <p>9 <b>that the contract and the procedures for</b></p> <p>10 <b>appointing a contracting officer representative</b></p> <p>11 <b>was clear and sufficient.</b></p> <p>12 Q. And how did Montage know what</p> <p>13 authority Mr. Skov had as opposed to when they</p> <p>14 had to go to Ms. Neal as the contracting officer?</p> <p>15 MR. WAX: I'm going to object as to</p> <p>16 form.</p> <p>17 <b>A. Because Ms. Neal, as the contracting</b></p> <p>18 <b>officer, has a warrant to her authority, and</b></p> <p>19 <b>she's a contract specialist when she didn't have</b></p> <p>20 <b>the warrant. So she's working directly for the</b></p> <p>21 <b>contracting office. And Mr. Skov is a COR with</b></p> <p>22 <b>specific authority assigned to him in his</b></p>



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21 (81 to 84)

81	<p><b>1 delegation letter.</b></p> <p>2 Q. So what I'm trying to understand is</p> <p>3 you say in the top email to Mr. Skov, "You have</p> <p>4 written notice and direction. You as the COR</p> <p>5 shall consider it a change to the contract."</p> <p><b>6 A. I'm just trying to make sure that he</b></p> <p><b>7 understands his authority as a COR is limited to</b></p> <p><b>8 that specifically assigned to him in the</b></p> <p><b>9 delegation letter.</b></p> <p>10 Q. But there were certain things that he</p> <p>11 could do as a COR that could modify the contract</p> <p>12 within the scope of his warrant, correct?</p> <p><b>13 A. I don't --</b></p> <p>14 MR. WAX: I'm going to object to the</p> <p>15 form.</p> <p><b>16 A. I'm not sure he had a warrant.</b></p> <p>17 Q. Okay. Did you ever review his --</p> <p>18 whatever documentation it is that made him the</p> <p>19 COR on this project? Have you ever reviewed</p> <p>20 that?</p> <p><b>21 A. Not his particular delegation, no.</b></p> <p>22 Q. You go on to say, "We will not issue a</p>	83	<p><b>1 withdraw COR authority from a person and they</b></p> <p><b>2 maintained the project director, I wanted it to</b></p> <p><b>3 be clear that they're not equal. So if you pull</b></p> <p><b>4 one you can't continue with the other.</b></p> <p>5 Q. What was the concern though with</p> <p>6 contractors digging to find problems? Was this</p> <p>7 not an issue of authority?</p> <p><b>8 A. I don't recall at this time.</b></p> <p>9 Q. I apologize. I stepped you on there.</p> <p>10 Who's the current COR on the Guayaquil</p> <p>11 project?</p> <p><b>12 A. There is no COR.</b></p> <p>13 Q. Is there anyone -- since the project</p> <p>14 is not complete, is there anyone acting in that</p> <p>15 role?</p> <p>16 MR. WAX: I'm going to object to the</p> <p>17 form.</p> <p><b>18 A. I don't believe there would be anyone</b></p> <p><b>19 acting in the role, because you have to be</b></p> <p><b>20 officially appointed in writing. But certainly</b></p> <p><b>21 the facilities manager would be responsible for</b></p> <p><b>22 ensuring that any uncompleted work would be</b></p>
82	<p>1 stand-alone mod for this as we do not wish to</p> <p>2 draw attention to the indiscretion." And I</p> <p>3 realize there's more there, but let me just ask,</p> <p>4 what do you mean you don't want to draw attention</p> <p>5 to the indiscretion? What's the indiscretion?</p> <p><b>6 A. The fact that OBO has put in division</b></p> <p><b>7 one the term project director slash COR, as if</b></p> <p><b>8 they were equal.</b></p> <p>9 Q. And then you end that sentence by</p> <p>10 saying, "Next thing we know, contractors will be</p> <p>11 digging to find problem areas to use against us."</p> <p>12 What did you mean by that?</p> <p><b>13 A. Just that.</b></p> <p>14 Q. Can you explain that to me? Are there</p> <p>15 things -- are you suggesting it would make a</p> <p>16 difference to a contractor whether it was just a</p> <p>17 COR or a PD slash COR?</p> <p>18 MR. WAX: I'm going to object to the</p> <p>19 form.</p> <p><b>20 A. I'm just trying to identify the fact</b></p> <p><b>21 that the project director and the COR is not the</b></p> <p><b>22 same. If there was an occasion where we had to</b></p>	84	<p><b>1 finished.</b></p> <p>2 Q. And who's the facilities manager on</p> <p>3 this project?</p> <p><b>4 A. I'm not sure.</b></p> <p>5 Q. You mean on site in Guayaquil?</p> <p><b>6 A. Yes, correct.</b></p> <p>7 Q. In Mr. Skov left in August of 2018,</p> <p>8 correct?</p> <p><b>9 A. I'm not sure.</b></p> <p>10 Q. Do you know who performed the</p> <p>11 functions of the COR after August of 2018?</p> <p><b>12 A. I do not.</b></p> <p>13 Q. You are aware that substantial</p> <p>14 completion was not granted until October and</p> <p>15 December of 2018, correct?</p> <p><b>16 A. I don't know specific dates.</b></p> <p>17 Q. Are you aware that there were several</p> <p>18 months prior to substantial completion being</p> <p>19 granted that there was no COR on the project?</p> <p><b>20 A. No, I'm not.</b></p> <p>21 Q. Would that impact the progress of the</p> <p>22 project?</p>

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22 (85 to 88)

<p style="text-align: right;">85</p> <p>1     <b>A. It shouldn't.</b></p> <p>2     Q. The court reporter is handing you</p> <p>3 what's been marked as Exhibit 106, which is an</p> <p>4 email string between you and Ms. Neal at the top,</p> <p>5 dated March 10, 2017. And let me know when</p> <p>6 you've read that.</p> <p>7     <b>A. (Reviewing.) Yes.</b></p> <p>8     Q. So focusing on the first page of</p> <p>9 Exhibit 106, Ms. Neal is reporting to you, quote,</p> <p>10 The actions taken by the OBO on site to involve</p> <p>11 post has gotten out of control to where post is</p> <p>12 contacting the DAS. I asked that we set a</p> <p>13 meeting with OBO CE Jorge Vazquez to discuss the</p> <p>14 events of our site visit and a firm path forward.</p> <p>15         Was the OBO on-site personnel that's</p> <p>16 referenced here Mr. Skov and Mr. Wright?</p> <p>17     <b>A. I believe so, yes.</b></p> <p>18     Q. And Ms. Neal's reporting to you that</p> <p>19 they have gotten, quote, out of control to where</p> <p>20 they're contacting the DAS. Who's DAS?</p> <p>21     <b>A. That's the Deputy Assistant Secretary.</b></p> <p>22     Q. That was an issue that concerned you</p>	<p style="text-align: right;">87</p> <p>1     <b>somewhere, but I don't know that I talked to</b></p> <p>2 <b>Jorge.</b></p> <p>3     Q. And Mr. Vazquez is Mr. Skov's</p> <p>4 immediate report?</p> <p>5     <b>A. Correct.</b></p> <p>6     Q. Or superior. I'm not sure what the</p> <p>7 right word would be.</p> <p>8     <b>A. At this time he was the branch chief.</b></p> <p>9     Q. And what was Mr. Vazquez's role on the</p> <p>10 Guayaquil project?</p> <p>11     <b>A. He's the branch chief and OBO</b></p> <p>12 <b>responsible for that general area of contracting</b></p> <p>13 <b>work.</b></p> <p>14     Q. And so I'll take you back to</p> <p>15 exhibit -- I think this was Exhibit 99, the</p> <p>16 chart. We have Mr. Skov in here. So where's</p> <p>17 Mr. Vazquez? Is he also in that same box with</p> <p>18 Mr. Skov?</p> <p>19     <b>A. Yes. Well -- yes, he's in the same</b></p> <p>20 <b>box but there would be another box here that</b></p> <p>21 <b>would show Jorge, and then below Jorge would be</b></p> <p>22 <b>Dave Skov.</b></p>
<p style="text-align: right;">86</p> <p>1 as well as Ms. Neal?</p> <p>2     <b>A. Correct.</b></p> <p>3     Q. And what was your resolution to the</p> <p>4 actions by Mr. Skov and Mr. Wright getting out of</p> <p>5 control on post?</p> <p>6     <b>A. Then we worked with the embassy to get</b></p> <p>7 <b>the contractor's payments of their employees</b></p> <p>8 <b>correct.</b></p> <p>9     Q. And so you on the top email report to</p> <p>10 Ms. Neal that Jorge is heading to the site to</p> <p>11 talk to his people, correct?</p> <p>12     <b>A. Correct.</b></p> <p>13     Q. And that's referring to Mr. Vazquez?</p> <p>14     <b>A. Correct.</b></p> <p>15     Q. What were your discussions between you</p> <p>16 and Mr. Vazquez with regard to this issue?</p> <p>17     <b>A. I don't think I had any discussions</b></p> <p>18 <b>with Mr. Vazquez on this issue.</b></p> <p>19     Q. So how did you know to advise Ms. Neal</p> <p>20 that Mr. Vazquez is heading to the site to talk</p> <p>21 to his people?</p> <p>22     <b>A. I became aware of the knowledge</b></p>	<p style="text-align: right;">88</p> <p>1     Q. Did you have conversations with</p> <p>2 Mr. Vazquez about this project?</p> <p>3     <b>A. I believe I did.</b></p> <p>4     Q. How often did you have conversations</p> <p>5 with Mr. Vazquez about the Guayaquil project?</p> <p>6     <b>A. Not very often, but I remember we did</b></p> <p>7 <b>have some conversations about this particular</b></p> <p>8 <b>issue where the contractor wasn't paying the</b></p> <p>9 <b>personnel.</b></p> <p>10     Q. And that issue got resolved, didn't</p> <p>11 it?</p> <p>12     <b>A. Correct.</b></p> <p>13     Q. And were you aware of Mr. Skov's and</p> <p>14 Mr. Wright's involvement in that controversy?</p> <p>15     <b>A. Yes.</b></p> <p>16     Q. Are you aware that Mr. Wright was</p> <p>17 talking to Montage's employees and providing them</p> <p>18 documentation in Spanish about what their</p> <p>19 employee benefit rights were?</p> <p>20     <b>A. No.</b></p> <p>21     Q. You were not aware of that?</p> <p>22     <b>A. Not that I recall, no.</b></p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 Q. And you were aware that Mr. Skov</p> <p>2 wanted Montage, or at least some of Montage's</p> <p>3 folks, thrown off the job as a result of this?</p> <p>4 <b>A. Correct, yes.</b></p> <p>5 Q. Were you aware that they had been</p> <p>6 talking to apparently the local police and</p> <p>7 understood that several Montage people were going</p> <p>8 to be arrested?</p> <p>9 <b>A. No.</b></p> <p>10 MR. WAX: I'm going to object.</p> <p>11 Q. Have you ever worked with Mr. Skov</p> <p>12 before, before the Guayaquil project?</p> <p>13 <b>A. I may have. I don't recall.</b></p> <p>14 Q. Not directly. It may have been one of</p> <p>15 the other many projects you oversee?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. Have you worked with Mr. Skov since</p> <p>18 the Guayaquil project?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Have you ever worked with Mr. Wright</p> <p>21 before?</p> <p>22 <b>A. Not that I recall.</b></p>	<p style="text-align: right;">91</p> <p>1 <b>A. This is a warrant request for</b></p> <p>2 <b>Mr. Skov.</b></p> <p>3 Q. Oh.</p> <p>4 <b>A. I don't know if we actually gave him a</b></p> <p>5 <b>warrant.</b></p> <p>6 Q. So let's look at the next two</p> <p>7 documents, Exhibit 3 and 4.</p> <p>8 MR. WAX: Sometimes my objections are</p> <p>9 a little hint to you that maybe we're talking</p> <p>10 about the wrong document.</p> <p>11 Q. So let me show you Exhibit -- well,</p> <p>12 I'm just going to show you Exhibit 4 because --</p> <p>13 let me show you Exhibit 3 and 4.</p> <p>14 <b>A. Okay.</b></p> <p>15 Q. And I just want to tell you, Exhibit 4</p> <p>16 is the only one that Mr. Skov signed as being the</p> <p>17 warrant. So can you look at that and identify</p> <p>18 that as being the warrant for Mr. Skov's COR</p> <p>19 duties on the Guayaquil project?</p> <p>20 MR. WAX: I'm going to object to the</p> <p>21 form. When there's a logical break, it's about</p> <p>22 that time.</p>
<p style="text-align: right;">90</p> <p>1 Q. Are you currently working with</p> <p>2 Mr. Wright on any projects that you're aware of?</p> <p>3 <b>A. Not that I know of.</b></p> <p>4 Q. Were you involved with the Bishkek</p> <p>5 project?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Let me show you what was previously</p> <p>8 marked as Exhibit 2 to these depositions, which</p> <p>9 is Mr. Skov's warrant.</p> <p>10 MR. WAX: Hang on.</p> <p>11 Q. Sir, showing you what's been marked as</p> <p>12 Exhibit 2, which Mr. Skov identified as being his</p> <p>13 warrant on the Guayaquil project. How --</p> <p>14 MR. WAX: I'm going to object to the</p> <p>15 form.</p> <p>16 Q. -- how does Mr. Skov's warrant as the</p> <p>17 COR on the Guayaquil project relate to Ms. Neal</p> <p>18 when she became a contract specialist? I'm</p> <p>19 trying to understand.</p> <p>20 When Ms. Neal became the contract</p> <p>21 specialist was she more on the same level with</p> <p>22 Mr. Skov, or is that apples and oranges?</p>	<p style="text-align: right;">92</p> <p>1 MS. HOSTETLER: Of course.</p> <p>2 <b>A. I don't see a warrant with either of</b></p> <p>3 <b>these documents.</b></p> <p>4 Q. Okay. So tell me what Exhibit 4 is.</p> <p>5 <b>A. Exhibit 4 is a letter from Donna Neal</b></p> <p>6 <b>appointing Mr. Skov as the contracting officer's</b></p> <p>7 <b>representative.</b></p> <p>8 Q. Okay.</p> <p>9 <b>A. And then the March -- that's</b></p> <p>10 <b>Exhibit 4.</b></p> <p>11 Q. Right. And Exhibit 3, I think we</p> <p>12 earlier established, was never signed by</p> <p>13 Ms. Neal. So it's just some earlier version?</p> <p>14 MR. WAX: I'm going to object to the</p> <p>15 form.</p> <p>16 <b>A. I'm not sure.</b></p> <p>17 MR. WAX: Just so you know, you said</p> <p>18 previously that Mr. Skov hadn't signed it, not</p> <p>19 Ms. Neal.</p> <p>20 MS. HOSTETLER: Thank you, thank you.</p> <p>21 Q. Exhibit 3, Ms. Neal never signed --</p> <p>22 well, actually I believe Ms. Neal initialed it</p>

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24 (93 to 96)

93	<p>1 but Mr. Skov didn't sign.</p> <p>2 MS. HOSTETLER: I think that's</p> <p>3 accurate, Counsel.</p> <p>4 MR. WAX: No, there's a difference</p> <p>5 between initialing something and signing</p> <p>6 something.</p> <p>7 MS. HOSTETLER: Fair enough.</p> <p>8 Q. So if you look at the contracting</p> <p>9 officer's -- what would we call that, an</p> <p>10 appointment letter?</p> <p><b>11 A. Yes.</b></p> <p>12 Q. So if you would look at Mr. Skov's</p> <p>13 appointment letter as COR, how do his duties</p> <p>14 compare to Ms. Neal's duties when she became a</p> <p>15 contract specialist?</p> <p><b>16 A. When Ms. Neal became a contract</b></p> <p><b>17 specialist she's still assigned to the</b></p> <p><b>18 contracting office. So she still has the</b></p> <p><b>19 authority of contracting to work on behalf of the</b></p> <p><b>20 government. She doesn't have authority to</b></p> <p><b>21 obligate the government any longer, but she has</b></p> <p><b>22 the authority to perform contract-related duties.</b></p>	95	<p>1 MS. HOSTETLER: We can take a break.</p> <p>2 MR. WAX: Oh, thank you.</p> <p>3 (A recess was taken.)</p> <p>4 (Exhibit 107 marked for identification</p> <p>5 and attached to the transcript.)</p> <p>6 BY MS. HOSTETLER:</p> <p>7 Q. So Mr. Vivian, I've shown you what's</p> <p>8 been marked as Exhibit 107, which is another org</p> <p>9 chart similar to what -- well, not similar, but</p> <p>10 an org chart different than what was Exhibit 99.</p> <p>11 So can you tell me where on this org chart you</p> <p>12 fall, if this is the right org chart?</p> <p><b>13 A. I'm not on here.</b></p> <p>14 Q. I don't think this is --</p> <p>15 MR. WAX: No.</p> <p>16 THE WITNESS: Yeah, yeah. Okay,</p> <p>17 right.</p> <p><b>18 A. Down the center, just one below that</b></p> <p><b>19 first box, you've got the assistant secretary.</b></p> <p><b>20 Then you have the managing director, Office of</b></p> <p><b>21 Procurement Executive. And then the next box is</b></p> <p><b>22 Office of Acquisition Management, that's me.</b></p>
94	<p>1 Q. So would she still have the authority</p> <p>2 to direct Mr. Skov on the Guayaquil project?</p> <p><b>3 A. Correct.</b></p> <p>4 MR. WAX: I'm going to object to the</p> <p>5 form.</p> <p><b>6 A. Yes, correct.</b></p> <p>7 Q. So let me ask just a couple more</p> <p>8 questions and then we'll take a break.</p> <p>9 MR. WAX: Thanks.</p> <p>10 Q. Let me take you back to Exhibit 46,</p> <p>11 which is where we were talking before I took us</p> <p>12 down this detour. We were talking about the</p> <p>13 second page where it says, "OBO on-site personnel</p> <p>14 were not warranted contracting officers nor</p> <p>15 authorized to change the terms of the contract by</p> <p>16 the contracting officer."</p> <p>17 So was Mr. Skov authorized to make any</p> <p>18 changes to the contract?</p> <p><b>19 A. Not that I recall.</b></p> <p>20 Q. Any changes to the contract had to</p> <p>21 come through Ms. Neal or you, correct?</p> <p><b>22 A. Correct.</b></p>	96	<p>1 Q. Can you just put a star with red on</p> <p>2 there so -- on the box that is you?</p> <p><b>3 A. Okay. (Marking.)</b></p> <p>4 Q. And so when you are the CO -- strike</p> <p>5 that.</p> <p>6 As the CO of the Guayaquil contract,</p> <p>7 you can decide if changes need to be made to the</p> <p>8 contract that are appropriate, that's within your</p> <p>9 scope of responsibility?</p> <p><b>10 A. Well, OBO would ask me and identify</b></p> <p><b>11 changes that need to occur and then I would</b></p> <p><b>12 institute those changes. So the change has to</b></p> <p><b>13 come through the technical people.</b></p> <p>14 Q. So a change doesn't start on your</p> <p>15 side, it has to start on the OBO side?</p> <p><b>16 A. Correct.</b></p> <p>17 Q. Is that true for all changes?</p> <p><b>18 A. Well, unless there's something that</b></p> <p><b>19 changes in the basic Federal Acquisition</b></p> <p><b>20 Regulation, but if there's anything to change on</b></p> <p><b>21 the project it has to come through OBO.</b></p> <p>22 Q. And --</p>

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25 (97 to 100)

97	<p>1 MR. WAX: Can you step out a second?</p> <p>2 I want to help them out, but I don't want to be</p> <p>3 accused of prompting the witness.</p> <p>4 THE WITNESS: Okay.</p> <p>5 (Witness leaves room.)</p> <p>6 MR. WAX: I mean I think -- this is</p> <p>7 always confusing to me too, because as you know,</p> <p>8 I know you know, I'm recent to the government.</p> <p>9 So there are phases in which AQM initiates things</p> <p>10 and there are phases that come through OBO. Like</p> <p>11 he said earlier, AQM is involved in the contract</p> <p>12 procurement phase and then OBO is involved in the</p> <p>13 actual construction. So I don't want you to be</p> <p>14 misled.</p> <p>15 MS. HOSTETLER: Well, I think one of</p> <p>16 the problems on this job is there were a lot of</p> <p>17 people telling a lot of people what to do.</p> <p>18 MR. WAX: Yeah, that I don't know.</p> <p>19 And whether they're telling them and whether</p> <p>20 they're warranted, I don't know any of the facts.</p> <p>21 But I just thought you would want to know that.</p> <p>22 MS. HOSTETLER: That helps. Thank you</p>	99	<p>1 took?</p> <p>2 <b>A. Like I said, the group, Donna and all</b></p> <p>3 <b>the technical people, would have worked up the</b></p> <p>4 <b>proposed response. It would have been reviewed</b></p> <p>5 <b>by legal and then reviewed by the director of AQM</b></p> <p>6 <b>before I sign it.</b></p> <p>7 Q. So Donna and her team put together a</p> <p>8 draft and then they send it to legal and to</p> <p>9 OPE --</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. -- for their sign-off and then it came</p> <p>12 back to you to issue?</p> <p>13 <b>A. That's the process, yes.</b></p> <p>14 Q. And is that review by those other two</p> <p>15 pieces of the Department of State merely for</p> <p>16 quality or is it a substantive review?</p> <p>17 <b>A. Certainly the review by the attorneys</b></p> <p>18 <b>is something that they recognize they can support</b></p> <p>19 <b>and defend.</b></p> <p>20 Q. So staying with Exhibit 46 -- let me</p> <p>21 ask you that same question with regard to OPE.</p> <p>22 Is that a quality review or a</p>
98	<p>1 so much.</p> <p>2 MR. WAX: Okay.</p> <p>3 BY MS. HOSTETLER:</p> <p>4 Q. So as the contracting officer</p> <p>5 rendering a final decision on the Guayaquil</p> <p>6 project, with whatever help you need to render</p> <p>7 that decision, you are the final authority. Is</p> <p>8 that fair and accurate?</p> <p>9 <b>A. That's correct.</b></p> <p>10 Q. So you don't have to go upstairs or</p> <p>11 sidewise for anyone else's consent before you</p> <p>12 issue a final accident?</p> <p>13 <b>A. That's not quite true. Because once</b></p> <p>14 <b>write the final decision, our quality assurance</b></p> <p>15 <b>requirements indicate that it has to be passed</b></p> <p>16 <b>through the legal office. And then it has to be</b></p> <p>17 <b>actually passed through the person that sits in</b></p> <p>18 <b>this position who is the director of OPE and AQM,</b></p> <p>19 <b>Office of Acquisition Management. She gets to</b></p> <p>20 <b>look at it as well.</b></p> <p>21 Q. So once you signed Exhibit 46 before</p> <p>22 it got to Montage, what was the process that it</p>	100	<p>1 substantive review of your final decision?</p> <p>2 MR. WAX: I'm going to object to form.</p> <p>3 <b>A. It could be a bit of both.</b></p> <p>4 Q. To your knowledge, did either legal or</p> <p>5 OPE make any changes to --</p> <p>6 MR. WAX: Don't --</p> <p>7 MS. HOSTETLER: Let me finish asking</p> <p>8 the question first.</p> <p>9 Q. -- make my changes to what you signed</p> <p>10 as Exhibit 46?</p> <p>11 MR. WAX: Don't answer.</p> <p>12 I'm going to object. You're inquiring</p> <p>13 into privileged communications. Do you want to</p> <p>14 rephrase?</p> <p>15 Q. Do OPE make any changes?</p> <p>16 <b>A. They did not.</b></p> <p>17 Q. Did legal make any changes?</p> <p>18 MR. WAX: Objection, privileged.</p> <p>19 Do not answer.</p> <p>20 Q. Did you have any discussion with</p> <p>21 anyone at OPE with regard to your final decision,</p> <p>22 Exhibit 46?</p>



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26 (101 to 104)

101	<p>1 <b>A. None that I recall.</b></p> <p>2 Q. And this is a yes or no answer.</p> <p>3 Did you have any discussions with</p> <p>4 legal with regard to Exhibit 46?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. I'm going to ask you a question and</p> <p>7 let him get his objection before you answer.</p> <p>8 What were those discussions?</p> <p>9 MR. WAX: Objection, privileged.</p> <p>10 Do not answer.</p> <p>11 Q. Who makes the ultimate decision with</p> <p>12 regard to any contract change?</p> <p>13 MR. WAX: I object to form.</p> <p>14 Q. On the Guayaquil project, who was --</p> <p>15 MR. WAX: I'm going to object to form.</p> <p>16 Q. -- who was the person who makes the</p> <p>17 ultimate decision regarding any contract changes?</p> <p>18 MR. WAX: I'm going to object to form.</p> <p>19 <b>A. The contracting officer would be the</b></p> <p>20 <b>individual who writes the actual modification to</b></p> <p>21 <b>incorporate the change. But it's a team effort</b></p> <p>22 <b>for the inclusion of any technical aspects of the</b></p>	103	<p>1 such failure precludes claims of constructive</p> <p>2 changes even if otherwise meritorious."</p> <p>3 Did you or your team look to see if</p> <p>4 there were any notices provided for any of these</p> <p>5 claims?</p> <p>6 <b>A. Yes, I believe they did.</b></p> <p>7 Q. And did they find any?</p> <p>8 <b>A. Not that I know of.</b></p> <p>9 Q. And that's true for all of the claims</p> <p>10 in this?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. The last sentence says, "Such failure</p> <p>13 precludes claims of constructive changes even if</p> <p>14 otherwise meritorious."</p> <p>15 Were any of these claims otherwise</p> <p>16 meritorious?</p> <p>17 <b>A. I can't remember.</b></p> <p>18 Q. So let's run through these claims.</p> <p>19 The first claim is for fire doors. So it's your</p> <p>20 decision that Montage was required to provide the</p> <p>21 new fire doors as part of the contract?</p> <p>22 <b>A. Well, my thing is that the</b></p>
102	<p>1 <b>project.</b></p> <p>2 Q. When you said that the contract change</p> <p>3 would come from OBO, who at OBO would make the</p> <p>4 decision to recommend to the contracting officer</p> <p>5 that a change needs to be made?</p> <p>6 <b>A. Usually it's the contracting officer</b></p> <p>7 <b>representative.</b></p> <p>8 Q. On the Guayaquil project, who was the</p> <p>9 individual or position that made the -- any</p> <p>10 proposed changes to the contract?</p> <p>11 <b>A. I don't know.</b></p> <p>12 Q. Do you know if that was Mr. Skov's</p> <p>13 role?</p> <p>14 MR. WAX: Objection.</p> <p>15 <b>A. As COR he should have been advising</b></p> <p>16 <b>Ms. Neal of an RFP or a change was required.</b></p> <p>17 Q. Getting back to your decision,</p> <p>18 Exhibit 46, we're on page two. Right above where</p> <p>19 it says claim one, there's a statement that says,</p> <p>20 "None of the claims demonstrate" -- excuse me --</p> <p>21 "None of the claims state or demonstrate that the</p> <p>22 requirements of FAR 52.243-7 were followed, and</p>	104	<p>1 <b>contracting -- the contractor submitted a claim</b></p> <p>2 <b>but didn't support it by providing any direction</b></p> <p>3 <b>that the government provided to install the</b></p> <p>4 <b>doors.</b></p> <p>5 Q. Were the fire doors installed?</p> <p>6 <b>A. I'm not sure.</b></p> <p>7 Q. Sitting here today you don't even know</p> <p>8 if the doors were actually installed or not?</p> <p>9 <b>A. I do not inspect the project.</b></p> <p>10 Q. But based upon -- as a contracting</p> <p>11 officer, you don't know whether or not the fire</p> <p>12 doors set forth in claim one of your final</p> <p>13 decision were actually installed or not?</p> <p>14 <b>A. Sitting here today, no, I do not.</b></p> <p>15 Q. So is it the government's position</p> <p>16 that the fire doors were unnecessary or that they</p> <p>17 were required by the contract?</p> <p>18 <b>A. Well, the contractor didn't -- it</b></p> <p>19 <b>didn't apply anything outside of the contract</b></p> <p>20 <b>that required the doors to be installed.</b></p> <p>21 Q. I don't want to put words in your</p> <p>22 mouth, but that sounded almost like you were</p>

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27 (105 to 108)

105	<p>1 saying that the doors didn't need to be</p> <p>2 installed?</p> <p>3 MR. WAX: Objection to form.</p> <p>4 Q. Did I misunderstand you?</p> <p>5 <b>A. Well, this says that the claim letter</b></p> <p>6 <b>asserts that the fire doors replace fire doors</b></p> <p>7 <b>that the contract drawings showed as existing and</b></p> <p>8 <b>to remain. And then the claim obviously – I</b></p> <p>9 <b>believe states that the contractor replaced the</b></p> <p>10 <b>fire doors.</b></p> <p>11 Q. So the contractor did replace the fire</p> <p>12 doors?</p> <p>13 <b>A. That's what the claim says.</b></p> <p>14 Q. Do you dispute that?</p> <p>15 <b>A. No.</b></p> <p>16 Q. And so then the question is, were they</p> <p>17 required to replace the fire doors or were they</p> <p>18 not required by the contract to replace the fire</p> <p>19 doors? And my question is, as issuing the final</p> <p>20 decision what was your decision, that they were</p> <p>21 required under the contract to replace the fire</p> <p>22 doors or they were not?</p>	107	<p>1 Q. R-O-D-D-I-C-K.</p> <p>2 <b>A. Mr. Roddick is a – I'm not sure of</b></p> <p>3 <b>his position. He is another individual that</b></p> <p>4 <b>works in OBO on the technical side of things.</b></p> <p>5 <b>Maybe an architect.</b></p> <p>6 Q. Have you looked to see what the</p> <p>7 drawings say with regard to these fire-rated</p> <p>8 doors?</p> <p>9 <b>A. No, I have not.</b></p> <p>10 (Exhibit 108 marked for identification</p> <p>11 and attached to the transcript.)</p> <p>12 Q. Let me show you what's been marked as</p> <p>13 Exhibit 108 to these depositions. And you're not</p> <p>14 on this, so if you want to take a few minutes to</p> <p>15 read it, let me know when you're ready to answer</p> <p>16 questions.</p> <p>17 <b>A. I'm done.</b></p> <p>18 Q. So I asked you earlier if you knew who</p> <p>19 Mr. Roddick was. Does this refresh your</p> <p>20 recollection as to whether or not he was one of</p> <p>21 the technical people for OBO on this project?</p> <p>22 <b>A. It does.</b></p>
106	<p>1 MR. WAX: Object to the form.</p> <p>2 <b>A. My issue is that the letter, right</b></p> <p>3 <b>here in this document, says that the COR required</b></p> <p>4 <b>replacement of where the project director</b></p> <p>5 <b>required replacement of the fire doors, and the</b></p> <p>6 <b>COR has no authority to require replacement of</b></p> <p>7 <b>the fire doors.</b></p> <p>8 Q. So maybe I understand what you're</p> <p>9 saying now. Is it fair to say that your decision</p> <p>10 was in part based upon the fact that the COR</p> <p>11 didn't have the authority to require the fire</p> <p>12 doors to be replaced, that had to have come from</p> <p>13 the contracting officer?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. And did Ms. Neal tell you whether or</p> <p>16 not she directed those fire doors to be replaced?</p> <p>17 <b>A. She did not.</b></p> <p>18 Q. She didn't tell you?</p> <p>19 <b>A. She did not tell me.</b></p> <p>20 Q. Thank you.</p> <p>21 Who is Mr. Roddick?</p> <p>22 <b>A. Roddick?</b></p>	108	<p>1 Q. And was he one of the technical people</p> <p>2 working on the Guayaquil project for the</p> <p>3 government?</p> <p>4 <b>A. By reading this email, it appears so.</b></p> <p>5 Q. And so Mr. Roddick says that he agrees</p> <p>6 "that the doors should be one hour so Montage --</p> <p>7 Montages should change them and be paid extra for</p> <p>8 that."</p> <p>9 Do you see that on the front page?</p> <p>10 <b>A. I see that it states thanks for the</b></p> <p>11 <b>input and he's confirming that the doors need to</b></p> <p>12 <b>be changed.</b></p> <p>13 Q. Right, they need to be changed. And</p> <p>14 that it's outside -- he said they should be paid</p> <p>15 for it, right?</p> <p>16 <b>A. Oh, yes, I see that now.</b></p> <p>17 Q. And Mr. Skov thanks him for his input</p> <p>18 and says "I'll see that an RFP is issued,"</p> <p>19 correct?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. And do you know if an RFP was ever</p> <p>22 issued?</p>



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28 (109 to 112)

<p style="text-align: right;">109</p> <p>1 <b>A. I do not.</b></p> <p>2 Q. If the contracting officer directed</p> <p>3 this change, would it be a compensable change?</p> <p>4 MR. WAX: I'm going to object to the</p> <p>5 form.</p> <p>6 <b>A. It would be a change we would pay a</b></p> <p>7 <b>fair and reasonable price for.</b></p> <p>8 Q. Given your -- strike that.</p> <p>9 Did you inquire of the contracting</p> <p>10 officer whether or not she directed this change?</p> <p>11 <b>A. I did not.</b></p> <p>12 Q. Given your determination that there</p> <p>13 was no entitlement to this claim, did you proceed</p> <p>14 to analyze the costs of the claims submitted by</p> <p>15 Montage?</p> <p>16 MR. WAX: I'm going to object to the</p> <p>17 form of the question.</p> <p>18 <b>A. I'm saying that based on the face of</b></p> <p>19 <b>the claim, I didn't have sufficient information.</b></p> <p>20 <b>And the team was responsible for working up my</b></p> <p>21 <b>decision on this one.</b></p> <p>22 Q. So let me unpack that a little bit.</p>	<p style="text-align: right;">111</p> <p>1 <b>circumstances that may apply, we would certainly</b></p> <p>2 <b>review this. And it may be acceptable.</b></p> <p>3 Q. Is this a claim in which you had</p> <p>4 sufficient information in order to be able to</p> <p>5 make a determination?</p> <p>6 <b>A. No. Because the claim didn't identify</b></p> <p>7 <b>the specific direction from any person that</b></p> <p>8 <b>directed the change.</b></p> <p>9 Q. And I think from your previous</p> <p>10 testimony you said you didn't ask Montage to</p> <p>11 provide any further information on this claim?</p> <p>12 <b>A. That's correct.</b></p> <p>13 Q. Do you know whether or not Ms. Neal or</p> <p>14 Mr. Skov asked Montage to provide further</p> <p>15 information?</p> <p>16 <b>A. I do not know.</b></p> <p>17 Q. So let me ask you a few questions</p> <p>18 about claim two, which is the TSS designed</p> <p>19 security conduit claim. Take a minute and read</p> <p>20 that.</p> <p>21 <b>A. Yes, I've read it.</b></p> <p>22 Q. So the government had a separate TSS</p>
<p style="text-align: right;">110</p> <p>1 You as the contracting officer made a</p> <p>2 decision there was not any entitlement to this</p> <p>3 claim, correct?</p> <p>4 <b>A. Based on the submission, correct.</b></p> <p>5 Q. And because you determined there was</p> <p>6 no entitlement, you didn't look at the</p> <p>7 reasonable -- look at the cost to see whether or</p> <p>8 not they were reasonable or not, correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 MS. HOSTETLER: Off the record.</p> <p>11 (Discussion off the record.)</p> <p>12 BY MS. HOSTETLER:</p> <p>13 Q. Earlier I had asked whether -- some</p> <p>14 questions about all of the claims as a whole, and</p> <p>15 you said some were and some weren't. And as we</p> <p>16 go through each of these let's identify.</p> <p>17 Is this a claim that, but for the</p> <p>18 notice requirements, would have been deemed</p> <p>19 meritorious?</p> <p>20 MR. WAX: I'm going to object on the</p> <p>21 form.</p> <p>22 <b>A. Well, looking at all the other</b></p>	<p style="text-align: right;">112</p> <p>1 contractor on this project, correct?</p> <p>2 <b>A. I'm not sure.</b></p> <p>3 Q. Well, did you understand from a high</p> <p>4 level claim two was for costs associated by</p> <p>5 Montage to develop the infrastructure to connect</p> <p>6 to the work being performed by the government's</p> <p>7 TSS worker?</p> <p>8 MR. WAX: I'm going to object to the</p> <p>9 form.</p> <p>10 <b>A. I do see that it's to do with the TSS</b></p> <p>11 <b>design security conduit plan, yes.</b></p> <p>12 Q. Do you have any understanding as to</p> <p>13 who the TSS contractor was on this job?</p> <p>14 <b>A. I do not.</b></p> <p>15 Q. Are you aware that the TSS contractor</p> <p>16 continued to revise their work until October of</p> <p>17 2016?</p> <p>18 <b>A. I did not know that.</b></p> <p>19 Q. Would you agree with me that any</p> <p>20 additional work beyond the work that would be</p> <p>21 shown on the RFP drawings would be extra work?</p> <p>22 <b>A. That would be a consideration, yes.</b></p>

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29 (113 to 116)

<p style="text-align: right;">113</p> <p>1 Q. And did you compare the RFP drawings</p> <p>2 to the as-builts to see whether or not this was</p> <p>3 extra work?</p> <p>4 MR. WAX: I'm going to object to the</p> <p>5 form.</p> <p>6 <b>A. The team that drafted the -- I</b></p> <p>7 <b>suggested draft response would have been</b></p> <p>8 <b>responsible for reviewing the circumstances.</b></p> <p>9 Q. Did they tell you -- did Ms. Neal tell</p> <p>10 you that she compared the RFP drawings to the</p> <p>11 final as-built to determine whether or not there</p> <p>12 was any additional work?</p> <p>13 <b>A. She did not.</b></p> <p>14 Q. Is this a claim in which the</p> <p>15 government needed more information?</p> <p>16 <b>A. Certainly the team felt they had</b></p> <p>17 <b>sufficient information to at least deny the</b></p> <p>18 <b>claim.</b></p> <p>19 Q. For each one of these I'm going to ask</p> <p>20 that question, is this more information or there</p> <p>21 was sufficient information.</p> <p>22 <b>A. Uh-huh.</b></p>	<p style="text-align: right;">115</p> <p>1 <b>A. It would be the contracting officer's</b></p> <p>2 <b>representative, the COR, as well as any support</b></p> <p>3 <b>personnel that that individual needed.</b></p> <p>4 Q. So that would Mr. Skov and anyone he</p> <p>5 felt he needed?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. Do you know if Mr. Skov looked at the</p> <p>8 RFP drawings versus the as-built?</p> <p>9 <b>A. I don't know.</b></p> <p>10 Q. If the as-built shows additional TSS</p> <p>11 infrastructure above and beyond what's in the RFP</p> <p>12 drawings, that would be considered extra work?</p> <p>13 <b>A. It could be, yes.</b></p> <p>14 Q. And it could be compensable?</p> <p>15 <b>A. It could be.</b></p> <p>16 Q. And when you say could be, that would</p> <p>17 be dependent upon what?</p> <p>18 <b>A. That the work wasn't just rerouted,</b></p> <p>19 <b>that it was actually additional work and labor</b></p> <p>20 <b>and materials.</b></p> <p>21 Q. Having determined that there was no</p> <p>22 entitlement to the changes that Montage asserted</p>
<p style="text-align: right;">114</p> <p>1 Q. And then I take at then that this was</p> <p>2 not one of those claims that but for notice</p> <p>3 requirement would have been deemed meritorious.</p> <p>4 Is that correct?</p> <p>5 <b>A. I can't say -- if additional</b></p> <p>6 <b>information was provided by the contractor it</b></p> <p>7 <b>would have been considered in the final decision</b></p> <p>8 <b>of whether it had merit or not.</b></p> <p>9 Q. Have you ever seen the drawings for</p> <p>10 this project?</p> <p>11 <b>A. Not that I recall.</b></p> <p>12 Q. So if I -- let me ask you this. If I</p> <p>13 show you the RFP drawings and show you the</p> <p>14 as-built drawings, can you look at them to</p> <p>15 compare whether or not that page is the same with</p> <p>16 their additional TSS infrastructure?</p> <p>17 <b>A. I would require technical personnel to</b></p> <p>18 <b>assist me in reviewing the drawings.</b></p> <p>19 Q. And who would be that technical person</p> <p>20 that would help you review the as-built to see if</p> <p>21 there were additional TSS structure that was not</p> <p>22 represented on the RFP drawings?</p>	<p style="text-align: right;">116</p> <p>1 in claim two, did the government analyze the cost</p> <p>2 associated with it?</p> <p>3 (Telephone ringing.)</p> <p>4 MR. WAX: I'm going to object to form.</p> <p>5 <b>A. Not that I recall.</b></p> <p>6 MR. WAX: Can you hold on one second?</p> <p>7 It might be China. Sorry. The reason I took</p> <p>8 that -- I know it's rude -- is China's 12 hours</p> <p>9 off. So when they call me, I've got to take it</p> <p>10 because I can't return the call.</p> <p>11 BY MS. HOSTETLER:</p> <p>12 Q. If the additional -- if TSS</p> <p>13 infrastructure was provided by a government</p> <p>14 subcontractor and that information was then</p> <p>15 provided to Montage, was that -- would that be</p> <p>16 sufficient notice of direction?</p> <p>17 MR. WAX: I'm going to object to the</p> <p>18 form.</p> <p>19 <b>A. I'm not sure. I would have to review</b></p> <p>20 <b>such submission.</b></p> <p>21 Q. What is TSS?</p> <p>22 <b>A. Technical security services.</b></p>

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30 (117 to 120)

117	<p>1 Q. And in a -- from a laymen's point of</p> <p>2 view what is that?</p> <p>3 <b>A. That's all the electronic connections</b></p> <p>4 <b>to doors and windows and other security systems</b></p> <p>5 <b>to let us know if -- let the Marine and post know</b></p> <p>6 <b>if an alarm was going off or if something had</b></p> <p>7 <b>been violated.</b></p> <p>8 (Exhibit 109 marked for identification</p> <p>9 and attached to the transcript.)</p> <p>10 Q. Mr. Vivian, the court reporter's</p> <p>11 handed you what's been marked as Exhibit 109 to</p> <p>12 these depositions. And I appreciate that you're</p> <p>13 not on this email, Ms. Neal is. But take a few</p> <p>14 minutes to look at it and I will ask you a few</p> <p>15 questions about it.</p> <p>16 <b>A. (Reviewing.) Yes, I've read it.</b></p> <p>17 Q. So let's just identify the parties.</p> <p>18 This is an email from Mr. Skov, the COR, to</p> <p>19 Mr. Quarles, who's the PM for the contractor,</p> <p>20 correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. And also copying Mr. Alvia and</p>	119	<p>1 start with this claim.</p> <p>2 <b>A. Not that I recall.</b></p> <p>3 Q. -- the TSS drawings?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Did you look at the documents in</p> <p>6 ProjNet in any way in preparation of your final</p> <p>7 decision reflected in Exhibit 46?</p> <p>8 <b>A. I did not.</b></p> <p>9 (Exhibit 110 marked for identification</p> <p>10 and attached to the transcript.)</p> <p>11 Q. Showing you what's been marked as</p> <p>12 Exhibit 110. That's a screenshot -- is that a</p> <p>13 screenshot from ProjNet? I'll represent to you</p> <p>14 that's what I believe it is. Does that look</p> <p>15 familiar to you?</p> <p>16 <b>A. It looks familiar, yes.</b></p> <p>17 Q. And if you look through that, that</p> <p>18 deals with -- down at the bottom it talks about</p> <p>19 TSS DIFC. And you see above -- where it's</p> <p>20 Mr. Quarles and you see above that is a -- are</p> <p>21 some drawings with the name Jerry Wessel,</p> <p>22 W-E-S-S-E-L. Do you see those?</p>
118	<p>1 Ms. Neal. Who's Mr. Alvia?</p> <p>2 <b>A. I don't know.</b></p> <p>3 Q. And Ms. Neal at the time was the</p> <p>4 contracting officer, correct?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. So Mr. Skov is sending a notice -- an</p> <p>7 email about revisions to the TSS drawings. Does</p> <p>8 this refresh any recollection you may have had</p> <p>9 with regard to whether or not the TSS</p> <p>10 infrastructure -- the TSS work was being done by</p> <p>11 a separate contractor?</p> <p>12 <b>A. No, it doesn't.</b></p> <p>13 Q. What is ProjNet?</p> <p>14 <b>A. ProjNet is the administrative system</b></p> <p>15 <b>OBO uses to track contracts -- projects.</b></p> <p>16 Q. Change drawings would be updated to</p> <p>17 the ProjNet system as needed. Is that accurate?</p> <p>18 <b>A. I'm not sure.</b></p> <p>19 Q. Have you ever looked at ProjNet?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Did you look at any of the</p> <p>22 documentation in ProjNet with regard to -- let's</p>	120	<p>1 <b>A. Yes.</b></p> <p>2 Q. Referencing that those are revised TSS</p> <p>3 drawings. Do you know who Mr. Wessel is?</p> <p>4 <b>A. No, I don't.</b></p> <p>5 Q. Does that refresh your understanding</p> <p>6 at all that TSS was contracted by the government?</p> <p>7 <b>A. No, it doesn't.</b></p> <p>8 Q. So let me ask you about claim three,</p> <p>9 which is the additional site utilities.</p> <p>10 You've already testified that you</p> <p>11 never visited the site, correct?</p> <p>12 <b>A. Correct.</b></p> <p>13 MR. WAX: Can I just read this?</p> <p>14 MS. HOSTETLER: Sure.</p> <p>15 Q. What is your understanding of what</p> <p>16 Montage was claiming for the additional site</p> <p>17 utilities expenses?</p> <p>18 <b>A. That they did work above and beyond</b></p> <p>19 <b>what was required by the contract on the</b></p> <p>20 <b>utilities and TSS.</b></p> <p>21 Q. And how did you determine -- strike</p> <p>22 that.</p>

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31 (121 to 124)

<p style="text-align: right;">121</p> <p>1 You determined that there was no</p> <p>2 entitlement to those utilities, those additional</p> <p>3 costs? Let me ask that a little bit cleaner.</p> <p>4 Did you determine that Montage claimed</p> <p>5 that they were entitled to any money for that</p> <p>6 claim.</p> <p>7 <b>A. I determined that they were not due</b></p> <p>8 <b>money based upon this issue.</b></p> <p>9 Q. And having determined that this was --</p> <p>10 strike that.</p> <p>11 Did you determine this was all work</p> <p>12 required by the contract or required by the work</p> <p>13 that they did as opposed to extra contractual</p> <p>14 work?</p> <p>15 MR. WAX: I'm going to object to the</p> <p>16 form.</p> <p>17 <b>A. That they were not due money based on</b></p> <p>18 <b>their claim submission.</b></p> <p>19 Q. So there's no question Montage did</p> <p>20 this work, right?</p> <p>21 <b>A. I believe that's correct.</b></p> <p>22 Q. And is it -- was it your decision that</p>	<p style="text-align: right;">123</p> <p>1 <b>A. I do not.</b></p> <p>2 Q. In your final decision you -- you</p> <p>3 quote right at the very end of claim three, you</p> <p>4 quote some language of the contract regarding</p> <p>5 storm water?</p> <p>6 MR. WAX: I'm going to object to form</p> <p>7 of the question.</p> <p>8 Q. Look at item four, minimal storm</p> <p>9 drainage piping along the two inlets and one</p> <p>10 manhole. Are you referring to the contract</p> <p>11 documents in this section?</p> <p>12 <b>A. Where are we at?</b></p> <p>13 Q. You divided this claim into four</p> <p>14 parts, correct?</p> <p>15 <b>A. Right.</b></p> <p>16 Q. So let me start with the fourth part.</p> <p>17 <b>A. Okay.</b></p> <p>18 Q. You rely upon certain contract</p> <p>19 documents for your decision, correct?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. And don't -- the document that's</p> <p>22 relied upon talks about an existing condition,</p>
<p style="text-align: right;">122</p> <p>1 this was work required by the contract?</p> <p>2 <b>A. That as well as the claim didn't</b></p> <p>3 <b>identify properly what the additional work was.</b></p> <p>4 Q. So this is one of those claims where</p> <p>5 there was some missing information that</p> <p>6 prohibited the government from being able to make</p> <p>7 a robust analysis. Is that fair?</p> <p>8 <b>A. That's fair.</b></p> <p>9 Q. Did you or Ms. Neal ever request that</p> <p>10 additional information?</p> <p>11 <b>A. I'm not sure if they did or not.</b></p> <p>12 Q. So which portion of this claim</p> <p>13 submitted by Montage was for work that was within</p> <p>14 the contract requirements?</p> <p>15 <b>A. Based on the review of the team and</b></p> <p>16 <b>their recommendation to me in the document that I</b></p> <p>17 <b>signed, they didn't see any merit to the</b></p> <p>18 <b>contractor's claim for additional cost.</b></p> <p>19 Q. Do you know if any of the people who</p> <p>20 put together this draft for you compared the</p> <p>21 as-builts to the RFP drawings to see what work</p> <p>22 was the same or different?</p>	<p style="text-align: right;">124</p> <p>1 correct?</p> <p>2 MR. WAX: Where are you?</p> <p>3 MS. HOSTETLER: I'm reading the</p> <p>4 gentleman's words.</p> <p>5 THE WITNESS: Yeah. On page --</p> <p>6 Exhibit 36.</p> <p>7 MR. WAX: Oh, we're not on claim</p> <p>8 three? Sorry.</p> <p>9 THE WITNESS: That first paragraph</p> <p>10 under number four.</p> <p>11 BY MS. HOSTETLER:</p> <p>12 Q. So you're referencing back to some of</p> <p>13 the contract documents with regard to the</p> <p>14 issue -- the storm drainage issue, correct?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. And the contract section 8.2.3.1.2.2,</p> <p>17 storm water that you're referencing, has two</p> <p>18 parts. It has an existing condition and a</p> <p>19 proposed condition, correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And the proposed condition was shown</p> <p>22 on the RFP drawings, correct?</p>

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32 (125 to 128)

<p style="text-align: right;">125</p> <p>1 <b>A. I'm not sure.</b></p> <p>2 Q. Was the proposed condition in the</p> <p>3 contract documents the condition -- the solution</p> <p>4 to this problem?</p> <p>5 MR. WAX: I'm going to object to the</p> <p>6 form.</p> <p>7 <b>A. It was a proposed solution.</b></p> <p>8 Q. Do you know if this was a solution</p> <p>9 that was actually used by the contractor?</p> <p>10 <b>A. I do not.</b></p> <p>11 Q. If the proposed solution didn't solve</p> <p>12 the storm water existing condition and changes</p> <p>13 had to be made, would that be extra contract</p> <p>14 work?</p> <p>15 MR. WAX: Objection to form.</p> <p>16 <b>A. It could be, correct.</b></p> <p>17 Q. And do you know here whether or not</p> <p>18 this proposed condition worked?</p> <p>19 MR. WAX: Objection to form.</p> <p>20 <b>A. I do not.</b></p> <p>21 Q. Isn't it true that the proposed</p> <p>22 condition didn't solve the problem and that</p>	<p style="text-align: right;">127</p> <p>1 <b>right.</b></p> <p>2 Q. And do you know who on behalf of the</p> <p>3 government was involved in arriving at this</p> <p>4 solution?</p> <p>5 <b>A. No. The government team as well as</b></p> <p>6 <b>the contractor's design team.</b></p> <p>7 Q. Mr. Skov arrived on the project in</p> <p>8 mid-2016. Is that correct?</p> <p>9 <b>A. I don't know.</b></p> <p>10 Q. 2015. I'm off a year.</p> <p>11 You don't know when Mr. Skov arrived</p> <p>12 on the project?</p> <p>13 <b>A. I do not.</b></p> <p>14 Q. Do you know whether or not Mr. Skov</p> <p>15 supervised the solution to this problem?</p> <p>16 <b>A. I don't know.</b></p> <p>17 Q. In your -- I take it these -- the four</p> <p>18 categories were segregated out by Ms. Neal and</p> <p>19 Mr. Skov?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. The first one deals with the ductbanks</p> <p>22 connecting buildings D and F via one</p>
<p style="text-align: right;">126</p> <p>1 Montage had to come up with a different solution?</p> <p>2 MR. WAX: Objection to the form.</p> <p>3 <b>A. I'm not sure.</b></p> <p>4 Q. But if you would compare the as-builts</p> <p>5 to the RFP drawings, they would show whether or</p> <p>6 not the proposed condition was ultimately the</p> <p>7 condition that was used on the project, correct?</p> <p>8 <b>A. They should.</b></p> <p>9 Q. And if they showed a different</p> <p>10 solution, then that should be extra work,</p> <p>11 correct?</p> <p>12 MR. WAX: Objection to the form.</p> <p>13 <b>A. Not necessarily.</b></p> <p>14 Q. And what would determine that?</p> <p>15 <b>A. If the balance of the work to install</b></p> <p>16 <b>whatever solution was successful was no more or</b></p> <p>17 <b>no more expensive than this proposed solution,</b></p> <p>18 <b>then we would continue that change.</b></p> <p>19 Q. Fair enough. So it might be a change</p> <p>20 but it might be a change that didn't merit any</p> <p>21 cost associated with it?</p> <p>22 <b>A. It might be a different solution,</b></p>	<p style="text-align: right;">128</p> <p>1 communications manhole.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Do you see that?</p> <p>4 <b>A. Uh-huh.</b></p> <p>5 Q. Do you know whether that was --</p> <p>6 whether that was even possible?</p> <p>7 <b>A. No, I do not.</b></p> <p>8 Q. Isn't the issue that's being addressed</p> <p>9 here that Montage had to -- somehow had to tie</p> <p>10 into the MSGR building?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And the question was how they were</p> <p>13 permitted or allowed to or required to tie into</p> <p>14 the MSGR building?</p> <p>15 <b>A. Yes, correct.</b></p> <p>16 Q. Were the manholes open during the site</p> <p>17 visit?</p> <p>18 <b>A. I'm not sure. I wasn't there.</b></p> <p>19 Q. How would Montage know how to tie into</p> <p>20 the MSGR?</p> <p>21 <b>A. Well, they would have to look at the</b></p> <p>22 <b>requirements of the contract and route the</b></p>



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33 (129 to 132)

<p style="text-align: right;">129</p> <p><b>1 necessary connections to the MSGR.</b></p> <p>2 Q. But there's -- you quote here some</p> <p>3 language from the contract that talks about what</p> <p>4 they're supposed to be able to do. If it's just</p> <p>5 a matter of provide conduit, then it wouldn't</p> <p>6 matter how they go or what order they went, it</p> <p>7 would just be provide conduit, right, as opposed</p> <p>8 to giving direction to where and how?</p> <p><b>9 A. It may be that simple. I'm not sure.</b></p> <p>10 Q. Do you know how much additional</p> <p>11 ductbank work and conduit was required by Montage</p> <p>12 as a part of this claim?</p> <p>13 MR. WAX: I'm going to object to the</p> <p>14 form.</p> <p><b>15 A. No, I don't.</b></p> <p>16 Q. Under item two you've got powered</p> <p>17 ductbank from transformer room to D and F with no</p> <p>18 manholes, and you've got some code sections here.</p> <p>19 What does this have to do with Montage's claim?</p> <p>20 How does this resolve Montage's claim?</p> <p><b>21 A. It didn't resolve it. It's just being</b></p> <p><b>22 considered in the -- by the team in the analysis</b></p>	<p style="text-align: right;">131</p> <p><b>1 A. I don't know. The architect or</b></p> <p><b>2 engineer might be able to figure out actual code</b></p> <p><b>3 appliances, or any other information provided</b></p> <p><b>4 herein that would apply to the actual run of the</b></p> <p><b>5 cable, but I'm not sure.</b></p> <p>6 Q. Before you denied this claim, did you</p> <p>7 look at the site survey report submitted for this</p> <p>8 project?</p> <p><b>9 A. I did not.</b></p> <p>10 Q. Did you look at -- I believe I asked</p> <p>11 you if you looked at any of the weekly reports</p> <p>12 that Montage submitted for this project?</p> <p><b>13 A. I did not look at them.</b></p> <p>14 Q. Because you found that this was either</p> <p>15 work that was required to be performed under the</p> <p>16 contract or you didn't have enough information to</p> <p>17 understand it, I take it you didn't review or</p> <p>18 analyze the cost associated with this claim?</p> <p><b>19 A. That's correct.</b></p> <p>20 MS. HOSTETLER: Off the record.</p> <p>21 (A lunch recess was taken.)</p> <p>22 BY MS. HOSTETLER:</p>
<p style="text-align: right;">130</p> <p><b>1 of the claim.</b></p> <p>2 Q. Help me understand what these code</p> <p>3 sections have to do with the additional site</p> <p>4 utilities that Montage says that they were</p> <p>5 required to do on this project.</p> <p><b>6 A. These code sections are providing</b></p> <p><b>7 additional information related to the performance</b></p> <p><b>8 of the work required by the contract.</b></p> <p>9 Q. Do any one of these code sections</p> <p>10 dictate where this ductbank was supposed to be?</p> <p><b>11 A. They may do. I'm not sure.</b></p> <p>12 Q. Well, under A.2.8.1.2, all of that</p> <p>13 information does not appear to be site specific,</p> <p>14 correct?</p> <p><b>15 A. It would be site specific if any of</b></p> <p><b>16 these conditions applied to the actual site.</b></p> <p>17 Q. But the issue here is how you're going</p> <p>18 to get from building D and F with no manholes.</p> <p>19 So how do those sections tell the contractor how</p> <p>20 they're supposed to do that?</p> <p>21 MR. WAX: I'm going to object to the</p> <p>22 form.</p>	<p style="text-align: right;">132</p> <p>1 Q. Mr. Vivian, before the break we were</p> <p>2 talking about your final decision involving the</p> <p>3 19 hard dollar claims that's Exhibit 46. If I</p> <p>4 can turn your attention to claim four on -- I</p> <p>5 guess there's no page number. But the number at</p> <p>6 the bottom ends with 11730. Take a look at that</p> <p>7 and let me know what you're ready to answer</p> <p>8 questions.</p> <p><b>9 A. (Reviewing.) Yes.</b></p> <p>10 Q. So is this a claim where the</p> <p>11 government had sufficient information to analyze</p> <p>12 the claim?</p> <p><b>13 A. I don't believe we did.</b></p> <p>14 Q. Did you or anyone on your behalf ask</p> <p>15 for additional information?</p> <p><b>16 A. Not that I know of.</b></p> <p>17 Q. You've denied this claim. Did you</p> <p>18 determine that this amount was not due and owing?</p> <p>19 That was really a bad question. Let me pull that</p> <p>20 back and say, the third sentence says, "For the</p> <p>21 first year on site the contractor plugged into</p> <p>22 post power source without installing an adequate</p>

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34 (133 to 136)

<p style="text-align: right;">133</p> <p>1 way to measure total compensation and to</p> <p>2 reimburse post."</p> <p>3 MR. WAX: Consumption.</p> <p>4 MS. HOSTETLER: Thank you,</p> <p>5 consumption.</p> <p>6 Q. Do you know whether or not there was</p> <p>7 an agreement for that?</p> <p>8 <b>A. I do not know.</b></p> <p>9 Q. Do you know whether or not there were</p> <p>10 weekly requests by Montage to settle up and pay</p> <p>11 their portion of the power?</p> <p>12 <b>A. No, I don't.</b></p> <p>13 Q. Was this claim denied on the merits?</p> <p>14 MR. WAX: Object, calls for -- well.</p> <p>15 <b>A. Yes. The team looked at it and</b></p> <p>16 <b>decided that this claim had no merit.</b></p> <p>17 Q. And because it was denied on the</p> <p>18 merits, did you have consider any of the costs</p> <p>19 associated with this claim?</p> <p>20 <b>A. I did not.</b></p> <p>21 Q. So this was not one of the claims that</p> <p>22 you referenced on page two that might have been</p>	<p style="text-align: right;">135</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. Was the work set forth in this claim</p> <p>3 performed by Montage?</p> <p>4 <b>A. As far as I know, yes.</b></p> <p>5 Q. And the claim was denied on its</p> <p>6 merits?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. And because it was denied on its</p> <p>9 merits, did the government consider the cost</p> <p>10 submitted?</p> <p>11 <b>A. We did not.</b></p> <p>12 Q. Was this a claim that was considered</p> <p>13 otherwise meritorious, as referenced on page two,</p> <p>14 had there been a proper notice?</p> <p>15 <b>A. I don't believe so.</b></p> <p>16 MR. WAX: I'm going to object to the</p> <p>17 form.</p> <p>18 Q. What is the basis for your</p> <p>19 determination that this was -- this work was</p> <p>20 required by the contract?</p> <p>21 <b>A. Based on the input of the team in this</b></p> <p>22 <b>description of the circumstances affecting the</b></p>
<p style="text-align: right;">134</p> <p>1 otherwise meritorious if there had been a proper</p> <p>2 notice?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. Do you know if there was a direction</p> <p>5 from the contracting officer with regard to the</p> <p>6 issues in claim four?</p> <p>7 <b>A. No, I do not.</b></p> <p>8 Q. So let me turn your attention to claim</p> <p>9 five of the contractor's final decision,</p> <p>10 Exhibit 46 and ask you to read that and I'll ask</p> <p>11 you a few questions about that.</p> <p>12 <b>A. I'm done.</b></p> <p>13 Q. So for claim five, is this a claim</p> <p>14 where the government had sufficient information</p> <p>15 to analyze the claim?</p> <p>16 <b>A. I believe so, yes.</b></p> <p>17 Q. And did the government determine that</p> <p>18 this was additional work outside the contract?</p> <p>19 <b>A. I believe we did not determine that it</b></p> <p>20 <b>was additional work.</b></p> <p>21 Q. So you determined that this was work</p> <p>22 required by the contract?</p>	<p style="text-align: right;">136</p> <p>1 <b>claim, it looks to me like the project</b></p> <p>2 <b>required -- this work there was no additional</b></p> <p>3 <b>work required.</b></p> <p>4 Q. And that's based upon the provision</p> <p>5 that's set forth in your final decision under</p> <p>6 claim four where you talking about piping</p> <p>7 installation and underground piping and the</p> <p>8 piping installation spec?</p> <p>9 <b>A. Correct.</b></p> <p>10 MR. WAX: Are we talking about five?</p> <p>11 MS. HOSTETLER: Yes, sir.</p> <p>12 MR. WAX: I thought you said four.</p> <p>13 Q. Were you aware of any contrary</p> <p>14 opinions by OBO as to whether or not this was</p> <p>15 work that was required by the contract?</p> <p>16 <b>A. No, I'm not.</b></p> <p>17 Q. Would that have been important for you</p> <p>18 to know?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Would it have been important for you</p> <p>21 to know that OBO subject matter specialists</p> <p>22 determined that this work was unnecessary?</p>



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35 (137 to 140)

<p style="text-align: right;">137</p> <p>1 MR. WAX: Object to the form.</p> <p>2 <b>A. Unnecessary. If it's required by the</b></p> <p>3 <b>contract, then it is necessary. It is required</b></p> <p>4 <b>to be performed.</b></p> <p>5 Q. And you're aware of the fact that</p> <p>6 there was a question as to whether or not you</p> <p>7 needed thrust blocks, joint restraints as well as</p> <p>8 wrapping the joint?</p> <p>9 <b>A. No, I'm not aware of that.</b></p> <p>10 Q. Let me ask you to take a look at</p> <p>11 claim 6 of Exhibit 46.</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Is this a claim where the government</p> <p>14 had sufficient information to analyze the claim?</p> <p>15 <b>A. Yes, I believe so.</b></p> <p>16 Q. And did the government determine that</p> <p>17 this was additional work outside the contract?</p> <p>18 <b>A. We did not.</b></p> <p>19 Q. And was the work set forth in this</p> <p>20 claim done?</p> <p>21 <b>A. As far as I know, yes.</b></p> <p>22 Q. And the claim was denied on its</p>	<p style="text-align: right;">139</p> <p>1 claim done?</p> <p>2 <b>A. Yes, I believe it was.</b></p> <p>3 Q. And was the claim denied on its</p> <p>4 merits?</p> <p>5 <b>A. Yes, it was.</b></p> <p>6 Q. And because it was denied on its</p> <p>7 merits, did the government consider the costs</p> <p>8 submitted?</p> <p>9 <b>A. We did not consider the cost.</b></p> <p>10 Q. Was this a claim that was otherwise</p> <p>11 meritorious as referenced on page two?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Do you know what this claim is about</p> <p>14 on seven?</p> <p>15 <b>A. I believe I do.</b></p> <p>16 Q. Can you, from a high level, explain to</p> <p>17 me what that claim is?</p> <p>18 <b>A. It looks like an intake in the HVAC</b></p> <p>19 <b>system was placed close to the exhaust, in that</b></p> <p>20 <b>same system. And so the intake would have been</b></p> <p>21 <b>pulling in the exhaust air. So something had to</b></p> <p>22 <b>be done to stop the exhaust from creeping over to</b></p>
<p style="text-align: right;">138</p> <p>1 merits, then?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. And because it was denied on its</p> <p>4 merits, did the government consider the cost</p> <p>5 submitted?</p> <p>6 <b>A. We did not.</b></p> <p>7 Q. Was this a claim that was otherwise</p> <p>8 meritorious except for the fact that there may</p> <p>9 not have been a notice?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Let me ask you to take a look at</p> <p>12 claim 7 of your contractor final decision,</p> <p>13 Exhibit 46. It starts at the bottom of the page.</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Is this claim where the government had</p> <p>16 sufficient information to analyze the claim?</p> <p>17 <b>A. I believe so.</b></p> <p>18 Q. And did the government determine that</p> <p>19 this was additional work or this was work</p> <p>20 required by the contract?</p> <p>21 <b>A. It was work required by the contract.</b></p> <p>22 Q. And was that work set forth in this</p>	<p style="text-align: right;">140</p> <p>1 <b>the intake.</b></p> <p>2 Q. And do you know what the proposed</p> <p>3 solutions were?</p> <p>4 <b>A. No, I don't.</b></p> <p>5 Q. Do you know whether that -- the louver</p> <p>6 for the fresh air intake was required?</p> <p>7 <b>A. No, I don't.</b></p> <p>8 Q. From your experience as a contract</p> <p>9 officer and overseeing a lot of contract</p> <p>10 officers, how long would it take to go through</p> <p>11 the IDR process to redesign this portion of the</p> <p>12 project?</p> <p>13 <b>A. I'm not sure. I don't know.</b></p> <p>14 Q. Could it take months?</p> <p>15 <b>A. Depending on the speed of the</b></p> <p>16 <b>architectural engineering firm, yes.</b></p> <p>17 Q. Do you know whether or not Montage</p> <p>18 sought the concurrence of OBO to not install the</p> <p>19 louver as opposed to trying to redesign?</p> <p>20 <b>A. No, I don't.</b></p> <p>21 Q. Would that make a difference in your</p> <p>22 determination as -- on the merits of this claim?</p>

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36 (141 to 144)

<p style="text-align: right;">141</p> <p>1     <b>A. It depends on the circumstances.</b></p> <p>2     Q. And how so?</p> <p>3     <b>A. Well, it depends on -- I mean if this</b></p> <p>4 <b>was a contract requirement, the contractor is</b></p> <p>5 <b>required to install the louver. If there was an</b></p> <p>6 <b>acceptable alternative means of construction, OBO</b></p> <p>7 <b>would consider it and we might issue a change to</b></p> <p>8 <b>the contract.</b></p> <p>9     Q. And even if that louver was determined</p> <p>10 not to be necessary?</p> <p>11     MR. WAX: Objection to the form.</p> <p>12    <b>A. Then we would need a technical</b></p> <p>13 <b>analysis to identify that.</b></p> <p>14    Q. And if the contractor found such a</p> <p>15 circumstance, what would be the appropriate</p> <p>16 matter of bringing this to the government's</p> <p>17 attention?</p> <p>18     MR. WAX: Objection to form.</p> <p>19    <b>A. A number of ways. Just identify it to</b></p> <p>20 <b>the COR or to issue it as an engineering change</b></p> <p>21 <b>proposal.</b></p> <p>22    Q. Or how about an RFI requesting</p>	<p style="text-align: right;">143</p> <p>1 submitted?</p> <p>2    <b>A. We did not.</b></p> <p>3    Q. Was this a claim that was otherwise</p> <p>4 meritorious, as referenced on page two, except</p> <p>5 for some notice provisions?</p> <p>6    <b>A. No.</b></p> <p>7    Q. What is your understanding, again from</p> <p>8 a high level point of view, of what Montage's</p> <p>9 issue is with regard to claim eight?</p> <p>10   <b>A. It appears to me that the contractor</b></p> <p>11 <b>was working on the irrigation system to install</b></p> <p>12 <b>some tanks and pumps, and when doing the</b></p> <p>13 <b>installation the contractor apparently dug up or</b></p> <p>14 <b>destroyed an existing pump and then they replaced</b></p> <p>15 <b>that pump in the course of installing the system</b></p> <p>16 <b>and then they would like to be paid for the</b></p> <p>17 <b>replacement of that pump.</b></p> <p>18    Q. Do you know if there was an existing</p> <p>19 irrigation system on site?</p> <p>20   <b>A. I believe there was.</b></p> <p>21    Q. Did you ever see it working?</p> <p>22   <b>A. I did not.</b></p>
<p style="text-align: right;">142</p> <p>1 information as to how to resolve the issue?</p> <p>2    <b>A. That would be acceptable.</b></p> <p>3    Q. Do you know if that was done?</p> <p>4    <b>A. No, I don't.</b></p> <p>5    Q. I ask you to take a look at your</p> <p>6 denial of claim eight in the COFD, Exhibit 46,</p> <p>7 and let me know when you're ready for questions.</p> <p>8    <b>A. (Reviewing.) Yes, I'm done.</b></p> <p>9    Q. Is this a claim where the government</p> <p>10 had sufficient information to analyze the claim?</p> <p>11   <b>A. I believe so, yes.</b></p> <p>12    Q. And did the government determine that</p> <p>13 this was additional work, or it work required by</p> <p>14 the contract?</p> <p>15   <b>A. It was work required by the contract.</b></p> <p>16    Q. Was the work set forth in this claim</p> <p>17 done?</p> <p>18   <b>A. I believe it was.</b></p> <p>19    Q. Was the claim denied on its merits?</p> <p>20   <b>A. Yes, it was.</b></p> <p>21    Q. Because it was denied on its merits,</p> <p>22 did the government consider any of the costs</p>	<p style="text-align: right;">144</p> <p>1    Q. Did you see any information that</p> <p>2 showed that there was a working irrigation system</p> <p>3 on site?</p> <p>4    <b>A. I did not.</b></p> <p>5    Q. What is the basis of your</p> <p>6 understanding that there was an existing</p> <p>7 irrigation system on site?</p> <p>8    <b>A. Well, just that the COR indicated that</b></p> <p>9 <b>the system was there and it had been removed by</b></p> <p>10 <b>the contractor, a portion of it.</b></p> <p>11    Q. And you're aware that at the time this</p> <p>12 issue arose, the irrigation system allegedly</p> <p>13 being destroyed, Mr. Skov was not on the project</p> <p>14 site?</p> <p>15   <b>A. I don't recall that.</b></p> <p>16    Q. In addition to reviewing the draft</p> <p>17 final decision that you ultimately adopted and</p> <p>18 signed, did you review the actual claims</p> <p>19 submitted by Montage?</p> <p>20   <b>A. I did not.</b></p> <p>21    Q. Is that -- is that true for all of the</p> <p>22 claims that are -- for which you're denying in</p>

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37 (145 to 148)

<p style="text-align: right;">145</p> <p>1 Exhibit 46?</p> <p>2 <b>A. That's correct.</b></p> <p>3 Q. Do you know if Ms. Neal investigated</p> <p>4 the issues associated with any of these claims</p> <p>5 and found differing conditions or differing facts</p> <p>6 other than what's set forth in Exhibit 46?</p> <p>7 <b>A. I don't know.</b></p> <p>8 Q. The second to the last paragraph of</p> <p>9 this claim you state, "After having destroyed the</p> <p>10 United States government's previously existing</p> <p>11 irrigation infrastructure in the area in question</p> <p>12 for its convenience of constructing other</p> <p>13 underground utilities, the contractor wants to</p> <p>14 charge the government for costs for the</p> <p>15 irrigation infrastructure destroyed by its</p> <p>16 construction operations."</p> <p>17 Other than the information contained</p> <p>18 in the several paragraphs under claim eight of</p> <p>19 Exhibit 46, what knowledge do you have to support</p> <p>20 that statement?</p> <p>21 <b>A. I have no other knowledge.</b></p> <p>22 Q. Did you review any photographs?</p>	<p style="text-align: right;">147</p> <p>1 Q. With respect to claim 9 of the</p> <p>2 contracting officer's final decision, Exhibit 46,</p> <p>3 is this a claim where the government had</p> <p>4 sufficient information to analyze the claim?</p> <p>5 <b>A. I believe we did.</b></p> <p>6 Q. Did the government determine that this</p> <p>7 was additional work?</p> <p>8 <b>A. We did not.</b></p> <p>9 Q. Was this work required by the</p> <p>10 contract?</p> <p>11 <b>A. Yes, it was.</b></p> <p>12 Q. Was the work set forth in this claim</p> <p>13 done?</p> <p>14 <b>A. I believe it was.</b></p> <p>15 Q. And was the claim denied on its</p> <p>16 merits?</p> <p>17 <b>A. Yes, it was.</b></p> <p>18 Q. And because it was denied on its</p> <p>19 merits, did the government consider the costs</p> <p>20 submitted?</p> <p>21 <b>A. We did not.</b></p> <p>22 Q. Was this a claim that was otherwise</p>
<p style="text-align: right;">146</p> <p>1 <b>A. I did not. The team would have been</b></p> <p>2 <b>responsible for doing that.</b></p> <p>3 Q. When you referred to the team, and as</p> <p>4 you've previously testified, that's Ms. Neal and</p> <p>5 Mr. Skov and anyone else that would have needed</p> <p>6 to provide input --</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. -- did they do their analysis together</p> <p>9 or separately? How do they work?</p> <p>10 <b>A. I'm not sure how they worked.</b></p> <p>11 Q. Do you know if they ever met to</p> <p>12 discuss these issues?</p> <p>13 <b>A. I don't know.</b></p> <p>14 Q. Do you know what they looked at and</p> <p>15 relied on?</p> <p>16 <b>A. I do not.</b></p> <p>17 Q. As the contracting officer submitting</p> <p>18 a final -- strike that.</p> <p>19 Take a look at claim nine of</p> <p>20 Exhibit 46 and tell me when you're ready to</p> <p>21 answer questions about that.</p> <p>22 <b>A. I'm done.</b></p>	<p style="text-align: right;">148</p> <p>1 meritorious, as referenced on page two, except</p> <p>2 for notice requirements?</p> <p>3 <b>A. No.</b></p> <p>4 Q. If this was work that was required by</p> <p>5 the contract, where in the contract was this work</p> <p>6 required to be done?</p> <p>7 <b>A. Well, it appears to me by this</b></p> <p>8 <b>paragraph here that the work was required to be</b></p> <p>9 <b>done in order for the contractor to do other</b></p> <p>10 <b>related work that's required by the contract.</b></p> <p>11 Q. So it's not like it would have been</p> <p>12 just set forth specifically line by line in the</p> <p>13 contract, there would be a necessary implication</p> <p>14 by other language in the contract?</p> <p>15 MR. WAX: I'm going to object as to</p> <p>16 form.</p> <p>17 <b>A. Yes. Other performance requirements</b></p> <p>18 <b>yes.</b></p> <p>19 Q. Do you know what those other</p> <p>20 performance requirements are that would have</p> <p>21 necessitated this work?</p> <p>22 <b>A. It just says in here to -- for it to</b></p>

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38 (149 to 152)

149	<p><b>1 be able to perform other renovation work required</b></p> <p><b>2 by the contract. I don't know what work that</b></p> <p><b>3 was.</b></p> <p>4 Q. I'm sorry. You said you don't know?</p> <p><b>5 A. I do not know.</b></p> <p>6 Q. Keep your voice up --</p> <p><b>7 A. Okay.</b></p> <p>8 Q. -- just a little bit. Thank you.</p> <p>9 So take a look at your denial of</p> <p>10 claim 10 and let me know when you're ready to</p> <p>11 answer a few questions.</p> <p><b>12 A. (Reviewing.) I'm done.</b></p> <p>13 Q. Is this a claim, with regard to</p> <p>14 claim 10, where the government had sufficient</p> <p>15 information to analyze the claim?</p> <p><b>16 A. I believe we did.</b></p> <p>17 Q. And did the government determine that</p> <p>18 this was additional work or work required by the</p> <p>19 contract?</p> <p><b>20 A. Work required by the contract.</b></p> <p>21 Q. And was the claim denied on its</p> <p>22 merits?</p>	151
150	<p><b>1 A. Yes, it was.</b></p> <p>2 Q. And because it was denied on its</p> <p>3 merits, did the government consider the costs</p> <p>4 submitted?</p> <p><b>5 A. We did not.</b></p> <p>6 Q. Was this a claim that was otherwise</p> <p>7 meritorious except for notice requirements, as</p> <p>8 you reference on page two?</p> <p><b>9 A. No.</b></p> <p>10 Q. Did the insulation change on this</p> <p>11 contract?</p> <p><b>12 A. I'm not sure.</b></p> <p>13 Q. If there was a change in insulation</p> <p>14 would that be -- assuming that it cost -- the new</p> <p>15 insulation cost more than the other, would that</p> <p>16 be an extra -- strike that. Let me start that</p> <p>17 whole sentence over again. I apologize, sir.</p> <p>18 If there was a change in the</p> <p>19 insulation requirements under the contract and</p> <p>20 the new requirements cost more than the old</p> <p>21 requirements, would that be changed work?</p> <p><b>22 A. It would be something to consider,</b></p>	152
	<p><b>1 yes.</b></p> <p>2 Q. Do you know if that's the case here?</p> <p><b>3 A. I don't know.</b></p> <p>4 Q. Let me ask you to take a look at your</p> <p>5 denial of claim 11 and let me know what you're</p> <p>6 ready to answer questions.</p> <p><b>7 A. (Reviewing.) I'm done.</b></p> <p>8 Q. With regard to your denial of</p> <p>9 claim 11, is this a claim where the government</p> <p>10 had sufficient information to analyze the claim?</p> <p><b>11 A. I believe we did.</b></p> <p>12 Q. And did the government determine that</p> <p>13 this was additional work or work required by the</p> <p>14 contract?</p> <p><b>15 A. Work required by the contract.</b></p> <p>16 Q. And was the work set forth in this</p> <p>17 claim done?</p> <p><b>18 A. Yes.</b></p> <p>19 Q. And was the claim denied on its</p> <p>20 merits?</p> <p><b>21 A. Yes, it was.</b></p> <p>22 Q. And because it was denied on its</p>	
	<p>1 merits, did the government consider the cost</p> <p>2 submitted?</p> <p><b>3 A. We did not.</b></p> <p>4 Q. And was this a claim that was</p> <p>5 otherwise meritorious except for notice</p> <p>6 requirements as you reference on page two?</p> <p><b>7 A. No.</b></p> <p>8 Q. Take a look at claim 12.</p> <p><b>9 A. (Reviewing.) I'm done.</b></p> <p>10 Q. With regard to your denial of</p> <p>11 claim 12, is this a claim where the government</p> <p>12 had sufficient information to analyze the claim?</p> <p><b>13 A. I believe we did.</b></p> <p>14 Q. Did the government determine that this</p> <p>15 was additional work?</p> <p><b>16 A. We did not.</b></p> <p>17 Q. Was the work set forth in this claim</p> <p>18 done?</p> <p><b>19 A. I believe it was.</b></p> <p>20 Q. Did you deny the claim on its merits?</p> <p><b>21 A. Yes, I did.</b></p> <p>22 Q. And because you denied the claim on</p>	

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39 (153 to 156)

<p style="text-align: right;">153</p> <p>1 its merits, did you consider the cost submitted?</p> <p>2 <b>A. Did not.</b></p> <p>3 Q. Was this a claim that was otherwise</p> <p>4 meritorious except for notice requirements, as</p> <p>5 referenced on page two?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Take a look at page 13. Excuse me,</p> <p>8 claim 13.</p> <p>9 <b>A. (Reviewing.) Yes, I see it. I'm</b></p> <p>10 <b>done.</b></p> <p>11 Q. And with regard to your denial of</p> <p>12 claim 13, is this a claim where you had</p> <p>13 sufficient information to analyze the claim?</p> <p>14 <b>A. Yes, I did.</b></p> <p>15 Q. And did you determine that this was</p> <p>16 additional work or work required by the contract?</p> <p>17 <b>A. In part it looked like it was</b></p> <p>18 <b>additional work, but it was not performed</b></p> <p>19 <b>correctly.</b></p> <p>20 Q. And what do you mean by that?</p> <p>21 <b>A. It says that direction was correct and</b></p> <p>22 <b>that the battens as originally installed did not</b></p>	<p style="text-align: right;">155</p> <p>1 merits, did you consider the cost submitted?</p> <p>2 <b>A. I did not.</b></p> <p>3 Q. Was this a claim that was otherwise</p> <p>4 meritorious except for notice requirements, as</p> <p>5 set forth on page two?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Do you know how much of this was</p> <p>8 rework?</p> <p>9 <b>A. No, I don't.</b></p> <p>10 Q. What are wood battens?</p> <p>11 <b>A. I believe there some kind of pickets</b></p> <p>12 <b>or something that goes on the roof.</b></p> <p>13 Q. And what did you understand was the</p> <p>14 reason for why the wood battens were being</p> <p>15 directed to be changed by OBO?</p> <p>16 MR. WAX: Objection to form.</p> <p>17 <b>A. Because the battens, as originally</b></p> <p>18 <b>installed, did not meet the terms of the</b></p> <p>19 <b>contract.</b></p> <p>20 Q. And do you know what contract</p> <p>21 requirements are?</p> <p>22 <b>A. No, I don't.</b></p>
<p style="text-align: right;">154</p> <p>1 <b>meet the contract requirements. So it's maybe</b></p> <p>2 <b>rework, correction of previous work that was</b></p> <p>3 <b>done.</b></p> <p>4 Q. And do you know what the rework was?</p> <p>5 <b>A. No. It just says it didn't meet the</b></p> <p>6 <b>terms of the contract.</b></p> <p>7 Q. Did you investigate to find out</p> <p>8 whether -- why it didn't meet the terms of the</p> <p>9 contract in the first place?</p> <p>10 <b>A. No. The team would have been</b></p> <p>11 <b>responsible for determining that.</b></p> <p>12 Q. Was the work set forth in this -- in</p> <p>13 this claim done?</p> <p>14 <b>A. Yes, I believe it was.</b></p> <p>15 Q. Who on the team determined that this</p> <p>16 was work that was required by the contract?</p> <p>17 <b>A. I'm not sure who, actual person on the</b></p> <p>18 <b>team.</b></p> <p>19 Q. Was the claim denied -- did you deny</p> <p>20 the claim on its merits?</p> <p>21 <b>A. Yes, I did.</b></p> <p>22 Q. Because you denied the claim on its</p>	<p style="text-align: right;">156</p> <p>1 Q. Take a look at claim 14 and let me</p> <p>2 know when you're ready.</p> <p>3 <b>A. (Reviewing.) I'm done.</b></p> <p>4 Q. With regard to your denial of</p> <p>5 claim 14, is this a claim where the government</p> <p>6 had sufficient information to analyze the claim?</p> <p>7 <b>A. I believe we did.</b></p> <p>8 Q. And did you determine that this was</p> <p>9 additional work or work required under the</p> <p>10 contract?</p> <p>11 <b>A. It was corrective work required by the</b></p> <p>12 <b>contract.</b></p> <p>13 Q. And how was it corrective work?</p> <p>14 <b>A. Because the location of the two-car</b></p> <p>15 <b>canopy wasn't correct and had to be relocated.</b></p> <p>16 Q. And why was the location of the</p> <p>17 two-car canopy not correct?</p> <p>18 <b>A. I think it was jutting out into the</b></p> <p>19 <b>lane of traffic. So it had to be relocated to</b></p> <p>20 <b>lessen any danger of it being damaged.</b></p> <p>21 Q. Didn't post want this relocated</p> <p>22 because they didn't want to give up two parking</p>



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40 (157 to 160)

<p style="text-align: right;">157</p> <p>1 spaces?</p> <p>2 <b>A. I believe there was something about</b></p> <p>3 <b>post wanting it moved as well.</b></p> <p>4 Q. And the fact that post wanted it moved</p> <p>5 from its original location on the RFP drawings,</p> <p>6 how did that factor into your decision to this</p> <p>7 claim?</p> <p>8 MR. WAX: Objection to form.</p> <p>9 <b>A. I don't recall. The team would have</b></p> <p>10 <b>been responsible for evaluating that.</b></p> <p>11 Q. But you are aware that it's not as if</p> <p>12 the two-car canopy moved a few feet one way or</p> <p>13 the other, but it was actually moved to another</p> <p>14 portion of the compound?</p> <p>15 MR. WAX: I'm going to object to form.</p> <p>16 <b>A. No, it was moved a distance, correct.</b></p> <p>17 Q. And you know that post was involved in</p> <p>18 the location of where it was moved?</p> <p>19 <b>A. I believe that's correct.</b></p> <p>20 Q. And if it was moved because post</p> <p>21 wanted it moved, would that have made this --</p> <p>22 some of these -- some of this to be extra work?</p>	<p style="text-align: right;">159</p> <p>1 merits, you didn't consider any costs?</p> <p>2 <b>A. That's correct.</b></p> <p>3 Q. Was this a claim that was otherwise</p> <p>4 meritorious except for notice, as referenced on</p> <p>5 page two of your final decision?</p> <p>6 <b>A. No, not to my recollection.</b></p> <p>7 Q. Let me ask you to take a look at</p> <p>8 claim 15. Let me know when you're ready for some</p> <p>9 questions.</p> <p>10 <b>A. (Reviewing.) I'm done.</b></p> <p>11 Q. With regard to your denial of</p> <p>12 claim 15, is this a claim where you had</p> <p>13 sufficient information to analyze the claim?</p> <p>14 <b>A. I believe there was.</b></p> <p>15 Q. Did you determine that this was</p> <p>16 additional work or work required by the contract?</p> <p>17 <b>A. Work required by the contract.</b></p> <p>18 Q. And was the work set forth in this</p> <p>19 claim done?</p> <p>20 <b>A. I believe it was.</b></p> <p>21 Q. Was the claim denied on its merits?</p> <p>22 <b>A. It was.</b></p>
<p style="text-align: right;">158</p> <p>1 MR. WAX: Objection to form.</p> <p>2 <b>A. The team would have been responsible</b></p> <p>3 <b>for considering the results of the move and</b></p> <p>4 <b>whether it was an equitable adjustment for the</b></p> <p>5 <b>contractors not doing it so correctly than just</b></p> <p>6 <b>relocating it.</b></p> <p>7 Q. And did you ask any questions about</p> <p>8 the fact that this was moved in part because post</p> <p>9 wanted it moved and whether or not that resulted</p> <p>10 in any fair compensation that should be awarded</p> <p>11 to the contractor?</p> <p>12 <b>A. I do not ask.</b></p> <p>13 Q. Did you ask any questions about the</p> <p>14 two-car canopy being moved and why it was being</p> <p>15 moved and in any cost associated with that?</p> <p>16 <b>A. Not that I recall.</b></p> <p>17 Q. Was the work set forth in the claim</p> <p>18 done?</p> <p>19 <b>A. I believe it was.</b></p> <p>20 Q. Was the claim denied on its merits?</p> <p>21 <b>A. It was.</b></p> <p>22 Q. And because it was denied on its</p>	<p style="text-align: right;">160</p> <p>1 Q. And because it was denied on its</p> <p>2 merits, did you consider the costs submitted?</p> <p>3 <b>A. I did not.</b></p> <p>4 Q. Was this a claim that was otherwise</p> <p>5 meritorious except for notice provisions, as</p> <p>6 referenced on page two of your final decision?</p> <p>7 <b>A. Was not.</b></p> <p>8 Q. Ask you to look at claim 16. Let me</p> <p>9 know when you're ready for questions.</p> <p>10 <b>A. (Reviewing.) I'm done.</b></p> <p>11 Q. With regard to your denial of</p> <p>12 claim 16, is this a claim that you had sufficient</p> <p>13 information to analyze?</p> <p>14 <b>A. I believe it was.</b></p> <p>15 Q. And did you determine this was</p> <p>16 additional work or work required under the</p> <p>17 contract?</p> <p>18 <b>A. Work required by the contract.</b></p> <p>19 Q. Was the work set forth in this claim</p> <p>20 done?</p> <p>21 <b>A. Yes, it was.</b></p> <p>22 Q. Did you deny the claim on its merits?</p>

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41 (161 to 164)

161	<p>1 <b>A. I did.</b></p> <p>2 Q. And because you denied the claim on</p> <p>3 its merits, did you consider the cost?</p> <p>4 <b>A. I did not consider the cost.</b></p> <p>5 Q. Was this a claim that was otherwise</p> <p>6 meritorious except for notice provisions, as</p> <p>7 referenced on page two of your final decision?</p> <p>8 <b>A. No, it wasn't.</b></p> <p>9 Q. Ask you to take a look at claim 17 and</p> <p>10 let me know when you're done.</p> <p>11 <b>A. (Reviewing.) I'm done.</b></p> <p>12 Q. Is claim 17 a claim where you had</p> <p>13 sufficient information to analyze the claim?</p> <p>14 <b>A. I believe there was.</b></p> <p>15 Q. Did you determine this was additional</p> <p>16 work or work required under the contract?</p> <p>17 <b>A. Work required by the contract.</b></p> <p>18 Q. And where in the contract was there a</p> <p>19 requirement to put a textured finish on the new</p> <p>20 MSGR privacy walls?</p> <p>21 <b>A. It would have been somewhere in the</b></p> <p>22 <b>architectural engineering sections.</b></p>	163	<p>1 additional work or work required by the contract?</p> <p>2 <b>A. Work required by the contract.</b></p> <p>3 Q. And where within the contract was that</p> <p>4 work required?</p> <p>5 <b>A. I'm not sure.</b></p> <p>6 Q. Did you ask?</p> <p>7 <b>A. I did not.</b></p> <p>8 Q. Was the work set forth in this claim</p> <p>9 done?</p> <p>10 <b>A. Yes, I believe it was.</b></p> <p>11 Q. Was the claim denied on its merits?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And because it was denied on its</p> <p>14 merits did you consider the costs submitted?</p> <p>15 <b>A. I did not.</b></p> <p>16 Q. Was this a claim that was otherwise</p> <p>17 meritorious except for the notice provisions?</p> <p>18 <b>A. No.</b></p> <p>19 Q. I'll ask you to take a look at</p> <p>20 claim 19.</p> <p>21 <b>A. (Reviewing.) Yes, I'm done.</b></p> <p>22 Q. So with regard to your denial of</p>
162	<p>1 Q. And do you know sitting here today</p> <p>2 where that -- where those sections are?</p> <p>3 <b>A. I don't know.</b></p> <p>4 Q. Was the work set forth in this claim</p> <p>5 done?</p> <p>6 <b>A. I believe it was.</b></p> <p>7 Q. Was the claim denied on its merits?</p> <p>8 <b>A. Yes, it was.</b></p> <p>9 Q. And because you denied the claim on</p> <p>10 its merits, did you consider the cost submitted?</p> <p>11 <b>A. I did not.</b></p> <p>12 Q. Is this a claim that would have</p> <p>13 otherwise been meritorious except for the notice</p> <p>14 provisions?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Ask you to take a look at claim 18.</p> <p>17 <b>A. (Reviewing.) I'm done.</b></p> <p>18 Q. With regard to your denial of</p> <p>19 Montage's claim 18, is this a claim that you had</p> <p>20 sufficient information to analyze?</p> <p>21 <b>A. I believe so.</b></p> <p>22 Q. And did you determine that this was</p>	164	<p>1 claim 19, is this a claim where the government</p> <p>2 had sufficient information to analyze the claim?</p> <p>3 <b>A. I believe we did.</b></p> <p>4 Q. And did you determine that this was</p> <p>5 additional work or work required under the</p> <p>6 contract?</p> <p>7 <b>A. Work required by the contract.</b></p> <p>8 Q. Was the work set forth in this claim</p> <p>9 done?</p> <p>10 <b>A. I'm not sure.</b></p> <p>11 Q. Did you ask?</p> <p>12 <b>A. I did not.</b></p> <p>13 Q. Was the claim denied on its merits?</p> <p>14 <b>A. Yes, it was.</b></p> <p>15 Q. And because it was denied on its</p> <p>16 merits, did you consider any of the costs</p> <p>17 submitted?</p> <p>18 <b>A. I did not.</b></p> <p>19 Q. Was this a claim that was otherwise</p> <p>20 meritorious except for the notice requirement?</p> <p>21 <b>A. It was not.</b></p> <p>22 Q. So we've gone through the 19 claims</p>

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42 (165 to 168)

165	<p>1 and you testified that you relied upon your team,</p> <p>2 Mr. Skov, Ms. Neal and others who may have been</p> <p>3 working with them. Did you make any independent</p> <p>4 analysis of the information they provided to you?</p> <p><b>5 A. I did not.</b></p> <p>6 Q. And I believe you also testified that</p> <p>7 you did not review the actual claims themselves</p> <p>8 submitted by Montage or the supporting</p> <p>9 documentation for those claims, correct?</p> <p><b>10 A. That's correct.</b></p> <p>11 Q. So how can you be sure as the</p> <p>12 contracting officer, if you didn't read the</p> <p>13 claim, that your denials were accurate?</p> <p><b>14 A. Because I have to rely on the</b></p> <p><b>15 personnel that were tasked to analyze the claims</b></p> <p><b>16 and provide information for my decisions.</b></p> <p>17 Q. How much time did you -- did it take</p> <p>18 you to arrive at your decision to execute</p> <p>19 Exhibit 46 and deny these 19 claims?</p> <p>20 MR. WAX: Objection to form.</p> <p><b>21 A. I'm not sure how long it took. It</b></p> <p><b>22 took some time.</b></p>	167	<p>1 Q. So you issued a second final decision</p> <p>2 in this case, correct?</p> <p><b>3 A. Correct.</b></p> <p>4 MS. HOSTETLER: And if you would show</p> <p>5 the witness Exhibit 80.</p> <p><b>6 A. (Reviewing.) Ready.</b></p> <p>7 Q. So Exhibit 80 is your final decision</p> <p>8 as the contracting officer denying Montage's</p> <p>9 entitlement to any time extensions on this</p> <p>10 project, correct?</p> <p><b>11 A. Correct.</b></p> <p>12 Q. And my first question is going to be,</p> <p>13 what was your process in arriving at your</p> <p>14 decision?</p> <p><b>15 A. Well, it would have been the same team</b></p> <p><b>16 doing the analysis along with a scheduling expert</b></p> <p><b>17 to review the time-impact analysis that the</b></p> <p><b>18 contractor had submitted.</b></p> <p>19 Q. So is it fair to say that Mr. Skov and</p> <p>20 Ms. Neal, plus the scheduling consultant, along</p> <p>21 with anyone else they needed to prepare the draft</p> <p>22 of what is Exhibit 80?</p>
166	<p>1 Q. Are we talking hours, days, weeks?</p> <p><b>2 A. Probably days.</b></p> <p>3 Q. And how long did you spend in</p> <p>4 communications, I believe you said, with</p> <p>5 Ms. Neal?</p> <p><b>6 A. I can't remember.</b></p> <p>7 Q. So if it took you days to decide to</p> <p>8 execute what became your final decision, as</p> <p>9 reflected in Exhibit 46, and you didn't look at</p> <p>10 anything outside the four corners of what you</p> <p>11 were provided as a draft of Exhibit 46, why did</p> <p>12 it take so long?</p> <p><b>13 A. Well, it just took days from the time</b></p> <p><b>14 the document was submitted, my first initial read</b></p> <p><b>15 of it, and then any additional reads of it and</b></p> <p><b>16 talking to Ms. Neal and then, you know, finally</b></p> <p><b>17 deciding to sign it.</b></p> <p>18 Q. It wasn't like you dedicated a full</p> <p>19 several days to it. You had other</p> <p>20 responsibilities wearing your hat as the chief of</p> <p>21 your department, right?</p> <p><b>22 A. Correct.</b></p>	168	<p><b>1 A. Correct.</b></p> <p>2 Q. Did you make any changes to that draft</p> <p>3 before you executed it?</p> <p><b>4 A. I can't recall at the moment.</b></p> <p>5 Q. Would you have -- if you had made</p> <p>6 changes would there be drafts of this contracting</p> <p>7 officer's final decision in your files?</p> <p><b>8 A. Could be, yes.</b></p> <p>9 MS. HOSTETLER: I haven't seen any.</p> <p>10 So Counsel, if there are any -- Mr. Vivian, if</p> <p>11 you will provide them to your counsel and counsel</p> <p>12 can provide them to us.</p> <p>13 MR. WAX: Hang on. Let me just make</p> <p>14 sure. You want any drafts regarding Exhibit 80?</p> <p>15 MS. HOSTETLER: Yes, sir.</p> <p>16 (Document/data request.)</p> <p>17 BY MS. HOSTETLER:</p> <p>18 Q. Let me start with the fact that the</p> <p>19 request for the contracting officer's final</p> <p>20 decision was made in -- on April 10 of 2018. Why</p> <p>21 did it take so long for you to make your</p> <p>22 decision?</p>

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43 (169 to 172)

<p>169</p> <p>1 <b>A. Just administrative duties and other</b> 2 <b>responsibilities. And studying the contractor's</b> 3 <b>submittal, their claim.</b> 4 Q. So you actually looked at the 5 submittal made by the contractor for the time 6 entitlement claims? 7 <b>A. No. The team that was reviewing it</b> 8 <b>obviously needed more time, not myself.</b> 9 Q. Did you ever look at the contractor's 10 claim for entitlement for time? 11 <b>A. Not that I recall.</b> 12 Q. If you look over the second page -- 13 well, actually before we get to this, let me go 14 through the same question and maybe the same 15 answers with regard to the other final decision. 16 Other than being provided with a draft 17 of the final decision, which is Exhibit 80, what 18 additional documentation did you look at in 19 making your final decision? 20 <b>A. I don't recall.</b> 21 Q. Did you look at the contract -- excuse 22 me.</p>	<p>171</p> <p>1 MR. WAX: Objection to form. 2 <b>A. I don't believe I did.</b> 3 Q. You're aware that TIA 1, which was the 4 claim for the vetting delays -- let me ask you 5 this. 6 Are you aware that TIA 1, for which 7 Montage is claiming entitlement to time, involved 8 delays associated with vetting? 9 <b>A. Yes.</b> 10 Q. And are you aware that that vetting 11 delay claim had multiple binders of emails and 12 documentation to support its claim? 13 <b>A. No, I never saw that.</b> 14 Q. Are you aware that Montage's claim one 15 for vetting delays also contains schedule 16 analysis as well as internal documentation 17 showing that there were delays associated with 18 vetting? 19 <b>A. That would be required as part of a</b> 20 <b>TIA, correct.</b> 21 Q. So it was required but you never 22 reviewed any of that information?</p>
<p>170</p> <p>1 Did you look at Montage's claims that 2 they filed? 3 <b>A. I'm not sure. I don't recall.</b> 4 Q. Did you look at -- were there any 5 recommendations made by either Ms. Neal or 6 Mr. Skov other than what may be reflected in a 7 draft of your final decision? 8 <b>A. I don't believe so, no.</b> 9 Q. If you look at the top of page two of 10 your final decision, the last sentence before the 11 indented portion says, "The present claim is 12 presented in summary fashion in a six-page letter 13 supported only by a summary list of alleged delay 14 costs and contains little of substance other than 15 the following generalized list of grievances." 16 My first question to you is, did you 17 read the six-page letter? 18 <b>A. I don't recall.</b> 19 Q. Did you read the complete request for 20 time extension submitted by Montage and all the 21 accompanying exhibits? 22 <b>A. No, I --</b></p>	<p>172</p> <p>1 <b>A. I don't recall reviewing it.</b> 2 Q. I mean I have it and I can show it to 3 you because it's -- you're designated to testify 4 as to what you relied upon. So it's important 5 for us to know whether you actually looked at it 6 or not. 7 <b>A. Yes. I don't recall looking at it.</b> 8 Q. Okay, thank you. 9 In your analysis of the time claims, 10 for purpose of this I'm referring to the three 11 time claims for which you deny in Exhibit 80. 12 In your analysis of the time claims, 13 what did you do to analyze what you call the 14 generalized list of grievances on page two? 15 <b>A. I relied on the panel of the team to</b> 16 <b>analyze the REA, the claim.</b> 17 Q. And other than -- what did they tell 18 you with regard to this generalized list of 19 grievances? 20 <b>A. I don't recall.</b> 21 Q. Did you have any meetings with either 22 Ms. Neal or Mr. Skov or anyone else with regard</p>

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44 (173 to 176)

<p style="text-align: right;">173</p> <p>1 to any time entitlement?</p> <p>2 <b>A. I don't recall.</b></p> <p>3 Q. Did you ask Ms. Neal or Mr. Skov any</p> <p>4 questions about the generalized list of</p> <p>5 grievances set forth on page two of your</p> <p>6 contracting officer's final decision, Exhibit 80?</p> <p>7 <b>A. Not that I recall.</b></p> <p>8 Q. Do you have any independent</p> <p>9 information with regard to any of the information</p> <p>10 on page two?</p> <p>11 <b>A. I do --</b></p> <p>12 MR. WAX: Objection to form.</p> <p>13 <b>A. I do not.</b></p> <p>14 Q. Did Ms. Neal or Mr. Skov provide you</p> <p>15 with any documentation regarding the information</p> <p>16 contained on page two?</p> <p>17 <b>A. I don't recall.</b></p> <p>18 Q. If they did provide you with</p> <p>19 documentation, where would that documentation be?</p> <p>20 <b>A. I'm not sure.</b></p> <p>21 Q. Can I ask you to look back to Exhibit</p> <p>22 Number 1, which was the Notice of Deposition and</p>	<p style="text-align: right;">175</p> <p>1 <b>A. No, certainly not months. Maybe</b></p> <p>2 <b>hours.</b></p> <p>3 Q. Where did you understand that the list</p> <p>4 of grievances that's listed on page two of your</p> <p>5 final decision came from?</p> <p>6 <b>A. I believe it came from the</b></p> <p>7 <b>contractor's actual claim submission.</b></p> <p>8 Q. Let me show you what was previously</p> <p>9 marked as Exhibit 58 to these depositions.</p> <p>10 MS. HOSTETLER: Actually, that was</p> <p>11 Exhibit 58 to Ms. Lugo's deposition. So that's</p> <p>12 Department of State.</p> <p>13 MR. WAX: Oh. You mean it's not going</p> <p>14 to be in this pile?</p> <p>15 MS. HOSTETLER: I have no idea what</p> <p>16 the pile is that Jeff made.</p> <p>17 BY MS. HOSTETLER:</p> <p>18 Q. While your counsel's looking, just so</p> <p>19 you can be looking, I'll try to get him a copy,</p> <p>20 I'm going to ask you if you've seen that document</p> <p>21 before.</p> <p>22 MR. WAX: You look at it.</p>
<p style="text-align: right;">174</p> <p>1 you were designated for categories 7, 8 and 43.</p> <p>2 So item number 7 says, "The facts and details</p> <p>3 regarding the contracting officer's final</p> <p>4 decision dated August 17, 2018" -- which I</p> <p>5 believe is Exhibit 80 -- "denying Montage's</p> <p>6 certified claim number one, including reports,</p> <p>7 recommendations, evaluations and other documents</p> <p>8 considered by the contracting officer."</p> <p>9 When you prepared for your deposition</p> <p>10 today, did you look to see what information you</p> <p>11 had in your possession that you relied upon in</p> <p>12 preparation for executing the final decision</p> <p>13 that's Exhibit 80?</p> <p>14 <b>A. I reviewed the final decision. I did</b></p> <p>15 <b>not look anywhere else.</b></p> <p>16 Q. How long did it take you to -- strike</p> <p>17 that.</p> <p>18 From the time Ms. Neal and Mr. Skov</p> <p>19 presented you with a draft of Exhibit 80, how</p> <p>20 long did it take you to execute this document?</p> <p>21 <b>A. I'm not sure how long it took.</b></p> <p>22 Q. Hours, days, weeks, months?</p>	<p style="text-align: right;">176</p> <p>1 Q. Just so the record is clear, I'm</p> <p>2 handing you what's been marked as Exhibit 58 to</p> <p>3 Ms. Lugo's deposition, which is a September 1,</p> <p>4 2015 time-impact analysis report. And I can tell</p> <p>5 you, if you look through, you'll see there's lots</p> <p>6 of attachments. There are many binders of</p> <p>7 information that come with this.</p> <p>8 So my first question is, have you seen</p> <p>9 this document before?</p> <p>10 <b>A. I don't believe I have.</b></p> <p>11 Q. If you haven't seen it, then I won't</p> <p>12 ask you questions about it.</p> <p>13 MR. WAX: Oh, thank goodness.</p> <p>14 Q. And I believe you've already answered</p> <p>15 the question that there were at least four</p> <p>16 binders of information that came with this, that</p> <p>17 you didn't look at that information either?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. So we're back to -- and I just want to</p> <p>20 make sure now that we've looked at that. Did you</p> <p>21 look at either of the other two claims for time</p> <p>22 extension?</p>



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45 (177 to 180)

<p style="text-align: right;">177</p> <p>1     <b>A. No, I did not.</b></p> <p>2     Q. What did you base your final decision</p> <p>3 on?</p> <p>4     <b>A. The information provided in the</b></p> <p>5 <b>document that the team provided.</b></p> <p>6     Q. And when you say the information that</p> <p>7 was provided, is that a draft of Exhibit 80 or is</p> <p>8 there a separate recommendation of some sort?</p> <p>9     <b>A. No, that is Exhibit 80.</b></p> <p>10     MR. WAX: Will you excuse me?</p> <p>11     MS. HOSTETLER: Uh-huh.</p> <p>12     (Discussion off the record.)</p> <p>13 BY MS. HOSTETLER:</p> <p>14     Q. So there are three TIAs that you</p> <p>15 denied in Exhibit 80, correct?</p> <p>16     <b>A. Correct.</b></p> <p>17     Q. So let's just do them one at a time.</p> <p>18 So TIA 1, is that a claim where you had</p> <p>19 sufficient information to analyze the claim?</p> <p>20     <b>A. I believe so, yes.</b></p> <p>21     Q. And did you determine that there was</p> <p>22 entitlement to additional time?</p>	<p style="text-align: right;">179</p> <p>1 with that claim?</p> <p>2     <b>A. Did not.</b></p> <p>3     Q. And with respect to TIA 4, is that a</p> <p>4 claim where the government had sufficient</p> <p>5 information to analyze the claim?</p> <p>6     <b>A. We did.</b></p> <p>7     Q. And did you determine that this</p> <p>8 claim -- there was an entitlement to time</p> <p>9 associated with that claim?</p> <p>10     <b>A. There was no time.</b></p> <p>11     Q. And was the claim denied on its</p> <p>12 merits?</p> <p>13     <b>A. Yes, it was.</b></p> <p>14     Q. And because it was denied on its</p> <p>15 merits, did the government consider the costs</p> <p>16 submitted?</p> <p>17     <b>A. We did not.</b></p> <p>18     Q. With regard to TIA 1, you were aware,</p> <p>19 were you not, that for several months the RSO was</p> <p>20 short-staffed -- let me start back.</p> <p>21     What's the RSO?</p> <p>22     <b>A. It's Regional Security Officer.</b></p>
<p style="text-align: right;">178</p> <p>1     <b>A. The team did not determine, no.</b></p> <p>2     Q. And did you make any independent</p> <p>3 determination?</p> <p>4     <b>A. No, I did not.</b></p> <p>5     Q. Did you deny the claim on its merits?</p> <p>6     <b>A. Yes, I did.</b></p> <p>7     Q. And because you denied it on its</p> <p>8 merits, did you consider the cost associated with</p> <p>9 that claim?</p> <p>10     <b>A. I did not.</b></p> <p>11     Q. With regard to TIA 3, is that a claim</p> <p>12 where you had sufficient information to analyze</p> <p>13 the information?</p> <p>14     <b>A. I believe we did.</b></p> <p>15     Q. And did you determine that there was</p> <p>16 an entitlement to time for TIA 3?</p> <p>17     <b>A. No, there was no entitlement.</b></p> <p>18     Q. And was the claim denied on its</p> <p>19 merits?</p> <p>20     <b>A. Yes, it was.</b></p> <p>21     Q. And because it was denied on its</p> <p>22 merits, did you consider the costs associated</p>	<p style="text-align: right;">180</p> <p>1     Q. You're aware that for several months</p> <p>2 the RSO was short-staffed on this project, were</p> <p>3 you not?</p> <p>4     <b>A. No, I'm not.</b></p> <p>5     Q. Would that fact have impacted your</p> <p>6 understanding of Montage's claim?</p> <p>7     <b>A. No, it would not.</b></p> <p>8     Q. You reference in your denial that this</p> <p>9 is a total cost claim. What do you mean by that?</p> <p>10     MR. WAX: Hang on. Were you just</p> <p>11 talking about TIA 1?</p> <p>12     MS. HOSTETLER: I was.</p> <p>13     MR. WAX: And now you're talking</p> <p>14 about?</p> <p>15     MS. HOSTETLER: I asked a different</p> <p>16 question.</p> <p>17     <b>A. Yes. Total cost claim rather than an</b></p> <p>18 <b>itemized claim for individual events.</b></p> <p>19     Q. So you did not consider TIA 1, 3 and 4</p> <p>20 as relating to individual events?</p> <p>21     <b>A. The TIAs may have related to</b></p> <p>22 <b>individual events but the contractor, for the</b></p>

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46 (181 to 184)

<p style="text-align: right;">181</p> <p><b>1 cost of the impact that they're claiming, just</b></p> <p><b>2 grouped it all together.</b></p> <p>3 Q. You didn't understand that they were</p> <p>4 asking for a daily rate?</p> <p><b>5 A. Yes, daily rate.</b></p> <p>6 Q. But you thought they were asking for</p> <p>7 daily rate for the whole job?</p> <p><b>8 A. Correct.</b></p> <p>9 Q. I understand. And what was the basis</p> <p>10 of that understanding?</p> <p><b>11 A. Because the contractor didn't assign</b></p> <p><b>12 individual costs to each one of the individual</b></p> <p><b>13 items that they say delayed them. They are</b></p> <p><b>14 claiming an overall impact.</b></p> <p>15 Q. And when you were answering the</p> <p>16 question you were pointing to the list of</p> <p>17 grievances on page two. Is that correct?</p> <p><b>18 A. That's correct.</b></p> <p>19 Q. With regard to claim number one,</p> <p>20 TIA 1, which was the vetting claim, was that a</p> <p>21 total cost claim?</p> <p><b>22 A. No. I think that the entire submittal</b></p>	<p style="text-align: right;">183</p> <p>1 Q. And did you understand that the</p> <p>2 government performed its staffing in a timely --</p> <p>3 the government performed its vetting in a timely</p> <p>4 fashion?</p> <p><b>5 A. That's what I understood, yes.</b></p> <p>6 Q. Did you ever look at the submittals</p> <p>7 made by the government over time requesting their</p> <p>8 employees and contractors and subcontractors to</p> <p>9 be vetted?</p> <p><b>10 A. Well, I think the contractor would</b></p> <p><b>11 make those submittals to the government, they're</b></p> <p><b>12 requesting that personnel and contractors be</b></p> <p><b>13 vetted. But no, I did not look at that.</b></p> <p>14 Q. So if I went through, you know, was</p> <p>15 this enough time from here to here, you just</p> <p>16 didn't look at any of that information?</p> <p><b>17 A. That's correct.</b></p> <p>18 Q. You relied upon your team and they</p> <p>19 made the recommendation and you endorsed that?</p> <p><b>20 A. Correct.</b></p> <p>21 MR. WAX: Can we take a break?</p> <p>22 MS. HOSTETLER: Sure.</p>
<p style="text-align: right;">182</p> <p><b>1 was a total cost claim.</b></p> <p>2 Q. Fair enough. Did you analyze TIA 1</p> <p>3 alone as an independent claim?</p> <p><b>4 A. The team would have done the analysis</b></p> <p><b>5 and provided me with their recommendation for the</b></p> <p><b>6 contracting officer's decision.</b></p> <p>7 Q. And you've testified a few minutes ago</p> <p>8 that whether or not the RSO was short-staffed</p> <p>9 would not have impacted your denial -- would not</p> <p>10 have impacted your denial of the claim?</p> <p>11 MR. WAX: Objection to form.</p> <p>12 Q. Is that a fair -- did I understand</p> <p>13 you?</p> <p><b>14 A. That's correct.</b></p> <p>15 Q. Why wouldn't that have impacted the</p> <p>16 denial of TIA 1?</p> <p>17 MR. WAX: Objection to form.</p> <p><b>18 A. Because the RSO having personnel isn't</b></p> <p><b>19 a contract requirements matter, it's a matter of</b></p> <p><b>20 how long we have to perform the necessary</b></p> <p><b>21 security checks. That is the issue. Not the</b></p> <p><b>22 staffing of the RSO's office.</b></p>	<p style="text-align: right;">184</p> <p>1 MR. WAX: Is this a bad time?</p> <p>2 MS. HOSTETLER: No, that's fine.</p> <p>3 MR. WAX: Thanks.</p> <p>4 MS. HOSTETLER: Uh-huh.</p> <p>5 (A recess was taken.)</p> <p>6 BY MS. HOSTETLER:</p> <p>7 Q. A couple questions. On page four of</p> <p>8 Exhibit 80, which is your August 17, 2018</p> <p>9 contracting officer's final decision denying</p> <p>10 Montage's time claim, in the third paragraph down</p> <p>11 that starts with the contractor's proposal to</p> <p>12 RFP 02. Do you see that?</p> <p><b>13 A. Yes.</b></p> <p>14 Q. There's a reference there that this</p> <p>15 included a time extension that absorbed all</p> <p>16 alleged United States government delays until</p> <p>17 that time, and very importantly proposed a new</p> <p>18 construction duration and sequencing for each</p> <p>19 building.</p> <p>20 What were the alleged -- what were the</p> <p>21 USGA delays that were alleged at that time? What</p> <p>22 are you talking about there?</p>

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47 (185 to 188)

<p style="text-align: right;">185</p> <p>1 <b>A. I don't know.</b></p> <p>2 Q. Do you know if the government was</p> <p>3 having problems in turning over some of the</p> <p>4 buildings to Montage on this project? Problems</p> <p>5 just from a time point of view?</p> <p>6 <b>A. I believe there were some.</b></p> <p>7 Q. And that that related to the</p> <p>8 government's willingness to issue this RFP 02 to</p> <p>9 repair the roofs?</p> <p>10 <b>A. I'm not sure about that.</b></p> <p>11 Q. At the bottom of page four of your</p> <p>12 final decision on denying the time claims, you</p> <p>13 make reference to mod 003, and that goes over to</p> <p>14 the top of page five.</p> <p>15 Is it your position that mod 003</p> <p>16 released the claims for time extension for TIA 1?</p> <p>17 <b>A. I'm not sure if it was TIA 1, but it</b></p> <p>18 <b>was -- anything that was covered by this</b></p> <p>19 <b>modification you would not -- the contractor</b></p> <p>20 <b>would not be able to revisit those issues.</b></p> <p>21 Q. Because the release that you reference</p> <p>22 was a complete release for the work associated</p>	<p style="text-align: right;">187</p> <p>1 <b>by the government that we're settling the direct</b></p> <p>2 <b>costs, and maybe later consider any time, then we</b></p> <p>3 <b>would have a separate agreement to consider time</b></p> <p>4 <b>separately.</b></p> <p>5 Q. But this modification 003 doesn't</p> <p>6 address the vetting delays that Montage was</p> <p>7 asserting that happened earlier in the project,</p> <p>8 does it?</p> <p>9 <b>A. Not that I see on the face of the</b></p> <p>10 <b>modification, no.</b></p> <p>11 Q. Back to Exhibit 80, your final</p> <p>12 decision. You make reference -- on page four</p> <p>13 over into page five -- and this relates to TIA 4.</p> <p>14 And you do understand TIA 4 was Montage's</p> <p>15 asserted delays associated with access to the</p> <p>16 EOB?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Can you -- can you explain to me how</p> <p>19 building D and F could be substantially completed</p> <p>20 without access to the EOB?</p> <p>21 <b>A. No, I could not.</b></p> <p>22 Q. On the last -- the second-to-last</p>
<p style="text-align: right;">186</p> <p>1 with modification 003, correct?</p> <p>2 MR. WAX: Objection.</p> <p>3 <b>A. Any time extension that was granted in</b></p> <p>4 <b>modification number 003 would have been covered</b></p> <p>5 <b>by that phrase.</b></p> <p>6 MS. HOSTETLER: If you would show the</p> <p>7 witness Exhibit 86.</p> <p>8 Q. Mr. Vivian, if you would take a look</p> <p>9 at what's previously marked, I believe in</p> <p>10 Ms. Neal's deposition, as Exhibit 86, which is</p> <p>11 modification 003 to the Montage contract. And if</p> <p>12 you look over on the second page of that, you</p> <p>13 will see the release language that you quote in</p> <p>14 your final decision.</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. So can you explain to me how this</p> <p>17 modification and this release releases any of</p> <p>18 Montage's claim for time asserted under TIA 1?</p> <p>19 <b>A. (Reviewing.) Well, it appears that</b></p> <p>20 <b>this modification settles all matters related to</b></p> <p>21 <b>the work required to perform the roof repairs.</b></p> <p>22 <b>And so if the contractor didn't get an agreement</b></p>	<p style="text-align: right;">188</p> <p>1 paragraph of Exhibit 80, you make reference to --</p> <p>2 you're responding to the claim being</p> <p>3 substantially complete -- the project being</p> <p>4 substantially complete. And you refer to the</p> <p>5 case that the "MSGR remains unoccupied by the</p> <p>6 Marine security guards because Montage has failed</p> <p>7 to complete the work necessary for occupancy,</p> <p>8 including secure locks and life-safety issues of</p> <p>9 earthquake protection."</p> <p>10 As of August 17, 2018, what</p> <p>11 life-safety issues were preventing the Marines</p> <p>12 from moving into the MSGR?</p> <p>13 <b>A. It just says earthquake protection.</b></p> <p>14 <b>I'm not sure what particular actual installations</b></p> <p>15 <b>were being described.</b></p> <p>16 Q. What was your involvement as the CO at</p> <p>17 this time in the substantial completion</p> <p>18 discussions with Montage?</p> <p>19 <b>A. It was the team handling discussions</b></p> <p>20 <b>and working with the contractor. I was not</b></p> <p>21 <b>particularly individually involved.</b></p> <p>22 Q. And by the team you're referring to</p>

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48 (189 to 192)

<p style="text-align: right;">189</p> <p>1 Ms. Neal and Mr. Skov?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. Were Mr. Skov's absences from the</p> <p>4 project site a contributing factor to any delay</p> <p>5 asserted by Montage?</p> <p>6 <b>A. I'm not sure.</b></p> <p>7 Q. Were you aware that he was absent from</p> <p>8 the project site in 2016 as much as 25,</p> <p>9 30 percent of the time?</p> <p>10 <b>A. No.</b></p> <p>11 Q. I asked you earlier if you could</p> <p>12 explain how buildings D and F could be</p> <p>13 substantially complete without access to the EOB,</p> <p>14 and you said you didn't know, I believe, correct?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. Did you ask anybody?</p> <p>17 <b>A. No, I did not.</b></p> <p>18 Q. Mr. Vivian, as the contracting officer</p> <p>19 on this project, did you ever sit down with</p> <p>20 Montage to try to negotiate or resolve these</p> <p>21 various claims and TIAs that we've been</p> <p>22 discussing here today?</p>	<p style="text-align: right;">191</p> <p>1 <b>A. No, I didn't. I passed it to counsel.</b></p> <p>2 Q. Did you tell Sina that it was out of</p> <p>3 your hands to resolve, or words to that effect?</p> <p>4 <b>A. Something to that effect, yes.</b></p> <p>5 Q. And so as the contracting officer on</p> <p>6 this project, the decision to resolve the claims</p> <p>7 is no longer within your purview. Is that</p> <p>8 accurate?</p> <p>9 <b>A. That's accurate. After the appeal is</b></p> <p>10 <b>filed. It's now in litigation.</b></p> <p>11 Q. And that goes to legal?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. If you didn't have any authority to</p> <p>14 negotiate a settlement with Sina, why were you</p> <p>15 talking to him and asking him for information</p> <p>16 regarding settlement?</p> <p>17 MR. WAX: Objection to form.</p> <p>18 <b>A. Just he's a contractor involved in the</b></p> <p>19 <b>OBO construction program. I didn't want to just</b></p> <p>20 <b>shut him down. So if he still wants to be</b></p> <p>21 <b>involved, that's fine.</b></p> <p>22 Q. Other than legal, is there anyone else</p>
<p style="text-align: right;">190</p> <p>1 <b>A. No, I did not.</b></p> <p>2 Q. Did you not have -- at any time did</p> <p>3 you not sit down and have a discussion with</p> <p>4 Montage?</p> <p>5 <b>A. I probably did, but I don't recall.</b></p> <p>6 Q. Did you meet with Sina Moayed?</p> <p>7 <b>A. I met with the man often and I'm sure</b></p> <p>8 <b>we spoke about this project.</b></p> <p>9 Q. And did you meet with him earlier this</p> <p>10 year to discuss a resolution of Montage's various</p> <p>11 claims and issues?</p> <p>12 <b>A. He called me about a settlement after</b></p> <p>13 <b>the -- after the claim -- or the appeal had been</b></p> <p>14 <b>filed.</b></p> <p>15 Q. And did you have a discussion with him</p> <p>16 about it at that time?</p> <p>17 <b>A. Well, I just accepted his notice that</b></p> <p>18 <b>he would like to settle, but I turned it over to</b></p> <p>19 <b>counsel because it had been appealed.</b></p> <p>20 Q. Did you ask him to write a letter?</p> <p>21 <b>A. I believe I did.</b></p> <p>22 Q. Did you respond to that letter?</p>	<p style="text-align: right;">192</p> <p>1 who has to pass off on a settlement?</p> <p>2 <b>A. Certainly OBO. Probably OBO director</b></p> <p>3 <b>if there's a negotiated settlement rather than a</b></p> <p>4 <b>court order, yeah.</b></p> <p>5 Q. Many hours ago I showed you a letter</p> <p>6 about a CO visit to Guayaquil that Ms. Neal was</p> <p>7 taking --</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. -- in the May 2018 timeframe.</p> <p>10 Do you recall a series of meetings</p> <p>11 with Ms. Neal and Montage and perhaps others</p> <p>12 trying to arrive at a resolution of the</p> <p>13 substantial completion issues?</p> <p>14 <b>A. I know there were issues but I'm not</b></p> <p>15 <b>sure what particular issues they were talking</b></p> <p>16 <b>about during the meetings.</b></p> <p>17 (Exhibit 111 marked for identification</p> <p>18 and attached to the transcript.)</p> <p>19 Q. The court reporter's shown you what's</p> <p>20 been marked as Exhibit 111 to these depositions,</p> <p>21 which is an email initially from Donna Neal to</p> <p>22 Sina. And at the top you'll see Mr. Skov. But</p>

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49 (193 to 196)

<p style="text-align: right;">193</p> <p>1 she is transmitting a letter that is signed by</p> <p>2 you, as the contracting officer. And that</p> <p>3 letter's dated May 7, 2018. I'll let you take a</p> <p>4 look at it. My question's going to be, do you</p> <p>5 recall sending this letter?</p> <p><b>6 A. (Reviewing.) No, I don't recall</b></p> <p><b>7 sending a letter.</b></p> <p>8 Q. Do you recall having discussions about</p> <p>9 any of the issues contained in this letter?</p> <p><b>10 A. No, I don't.</b></p> <p>11 Q. Is it fair to say that by May of 2018</p> <p>12 there was a dispute, small D, between Montage and</p> <p>13 the government as to whether or not Montage was</p> <p>14 substantially complete on this project?</p> <p><b>15 A. There was some disagreement, yes.</b></p> <p>16 Q. Disagreement, that's better.</p> <p><b>17 A. Yes.</b></p> <p>18 Q. And Ms. Neal was trying to reach some</p> <p>19 resolution over that disagreement, correct?</p> <p><b>20 A. Correct.</b></p> <p>21 Q. And as of this point, she was no</p> <p>22 longer the contracting officer, which is why you</p>	<p style="text-align: right;">195</p> <p>1 Q. So first thing is I note that despite</p> <p>2 you signing the letter to Sina, Mr. Moayededi sends</p> <p>3 it back to Ms. Neal as the contracting officer.</p> <p>4 At any point did you correct Mr. Moayededi as to</p> <p>5 who was the actual contracting officer at this</p> <p>6 time?</p> <p><b>7 A. I did not.</b></p> <p>8 Q. And if you look through this, is it</p> <p>9 fair to say that Montage's almost immediate</p> <p>10 response is, we've done most of all this work?</p> <p><b>11 A. Yes.</b></p> <p>12 Q. And do you know how long it took some</p> <p>13 of these items to actually be removed from the</p> <p>14 substantial completion checklist?</p> <p><b>15 A. No, I don't.</b></p> <p>16 Q. Do you know if that was an issue on</p> <p>17 this job?</p> <p><b>18 A. I'm not sure.</b></p> <p>19 Q. Were you aware of any issue where</p> <p>20 Mr. Skov was reluctant to have substantial</p> <p>21 completion issued?</p> <p><b>22 A. No, I'm not.</b></p>
<p style="text-align: right;">194</p> <p>1 signed this letter?</p> <p><b>2 A. For her, correct.</b></p> <p>3 Q. Is it fair to say that this is a</p> <p>4 letter that she prepared and knows the contents</p> <p>5 of?</p> <p><b>6 A. Correct.</b></p> <p>7 Q. And you just signed it based upon your</p> <p>8 faith in her as the former contracting officer,</p> <p>9 that she knew what she was talking about?</p> <p><b>10 A. Yes. Because she's still the contract</b></p> <p><b>11 specialist.</b></p> <p>12 Q. Do you recall what response Montage</p> <p>13 made to the May 7, 2018 letter?</p> <p><b>14 A. No, I don't.</b></p> <p>15 (Exhibit 112 marked for identification</p> <p>16 and attached to the transcript.)</p> <p>17 Q. Showing you what's been marked as</p> <p>18 Exhibit 112, which is a color coded copy, which</p> <p>19 is -- appears to be an interlineated version of</p> <p>20 your letter to Sina showing Montage's reported</p> <p>21 status of the project. Do you see that, sir?</p> <p><b>22 A. Yes.</b></p>	<p style="text-align: right;">196</p> <p>1 Q. Why didn't the government respond to</p> <p>2 Mr. Moayededi's interlineation of your letter?</p> <p>3 MR. WAX: Objection to form.</p> <p><b>4 A. I'm not sure if the government didn't</b></p> <p><b>5 respond. I didn't get involved in responding in</b></p> <p><b>6 writing.</b></p> <p>7 Q. Did you have an oral conversation with</p> <p>8 regard to this matter?</p> <p><b>9 A. I did not.</b></p> <p>10 Q. What did it tell you about the</p> <p>11 disagreement between the parties that the -- the</p> <p>12 substantial completion checklist that's provided</p> <p>13 with, looks like close to -- looks like 648</p> <p>14 items, is returned immediately showing that a</p> <p>15 good number of those items have already been</p> <p>16 resolved?</p> <p>17 MR. WAX: Objection to form.</p> <p><b>18 A. Well, it's positive that the</b></p> <p><b>19 contractor is actually performing the work and</b></p> <p><b>20 moving towards substantial completion.</b></p> <p>21 Q. But what does it tell you about the</p> <p>22 disagreement as to what was done versus what</p>



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50 (197 to 200)

197	<p>1 wasn't done when -- within a short period of time</p> <p>2 Montage says, but we've already done this work?</p> <p>3 MR. WAX: Objection as to form.</p> <p>4 <b>A. It just shows that the contractor is</b></p> <p>5 <b>actually doing work and performing the work. So</b></p> <p>6 <b>they're working towards substantial completion.</b></p> <p>7 Q. Did it lead you to have some concern</p> <p>8 over whether or not the substantial completion</p> <p>9 checklists that were being generated by the</p> <p>10 government were accurate?</p> <p>11 <b>A. No, not particularly.</b></p> <p>12 Q. Did it lead you to have any sympathy</p> <p>13 for a contractor that immediately says of the</p> <p>14 650 items, we've already done at least half of</p> <p>15 these?</p> <p>16 <b>A. No. They should get together with the</b></p> <p>17 <b>COR and identify the facts and get the list</b></p> <p>18 <b>corrected.</b></p> <p>19 Q. And do you know if that was done?</p> <p>20 <b>A. No, I don't.</b></p> <p>21 Q. So this is early May of 2018. Were</p> <p>22 you aware that the government had not completed</p>
198	<p>1 its own TSS subcontractor work on this project as</p> <p>2 of that time?</p> <p>3 <b>A. No.</b></p> <p>4 Q. I think we talked a little bit earlier</p> <p>5 about some of the TSS. Are you aware of the</p> <p>6 problems with the government realizing that it</p> <p>7 was responsible for providing the TSS information</p> <p>8 so that -- and the TSS contractor, so that</p> <p>9 Montage could hookup to that infrastructure?</p> <p>10 MR. WAX: I'm going to object as to</p> <p>11 form.</p> <p>12 MS. HOSTETLER: That's kind of a</p> <p>13 convoluted question.</p> <p>14 Q. Would you like me to ask it again?</p> <p>15 <b>A. Yes, please.</b></p> <p>16 Q. So let's start with, do you recollect</p> <p>17 sitting here today that the government's TSS</p> <p>18 subcontractor didn't even show up on the job site</p> <p>19 to do their work until January of 2018?</p> <p>20 <b>A. No, I didn't know that.</b></p> <p>21 Q. Would that impact any of your</p> <p>22 decisions on any of these time final -- strike</p>
199	<p>1 that.</p> <p>2 Would that impact any of your view as</p> <p>3 to when substantial completion ought to be</p> <p>4 issued?</p> <p>5 <b>A. I would have to look at it and restudy</b></p> <p>6 <b>the circumstances.</b></p> <p>7 Q. Would that impact any of your decision</p> <p>8 on denying any of the time claims?</p> <p>9 <b>A. I would have to look at it to see if</b></p> <p>10 <b>it affected.</b></p> <p>11 Q. Would that impact your decision in</p> <p>12 assessing liquidated damages?</p> <p>13 <b>A. No. Once again, I would have to look</b></p> <p>14 <b>at it and see what circumstances affected the</b></p> <p>15 <b>work.</b></p> <p>16 Q. Mr. Vivian, the court reporter is</p> <p>17 showing you what was previously marked in</p> <p>18 Ms. Neal's deposition as Exhibit 68.</p> <p>19 MR. WAX: Do you have a copy for me?</p> <p>20 MS. HOSTETLER: Yeah, you should have</p> <p>21 it. That was from Ms. Neal's deposition.</p> <p>22 MR. WAX: You said there was a name.</p>
200	<p>1 That's what threw me. Okay.</p> <p>2 BY MS. HOSTETLER:</p> <p>3 Q. Do you recognize your decision in the</p> <p>4 assessing of liquidated damages dated January 28,</p> <p>5 2019, which is Exhibit 68?</p> <p>6 <b>A. Yes, I have Exhibit Number 68.</b></p> <p>7 Q. And you recognize that document?</p> <p>8 <b>A. No, not particularly.</b></p> <p>9 Q. Take a minute and read it and I'll ask</p> <p>10 you some questions about it.</p> <p>11 MR. WAX: Am I looking at the same</p> <p>12 thing?</p> <p>13 THE WITNESS: No.</p> <p>14 MS. HOSTETLER: No.</p> <p>15 <b>A. Because you've got a letter. We've</b></p> <p>16 <b>got an email. This is Exhibit 68.</b></p> <p>17 Q. So let's take a minute.</p> <p>18 So the record is clear, you've now</p> <p>19 been handed Exhibit 62, which is in fact, is it</p> <p>20 not, sir, your letter to Sina assessing</p> <p>21 liquidated damages on Montage?</p> <p>22 <b>A. That's correct.</b></p>

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51 (201 to 204)

201	<p>1 Q. And you assess liquidated damages</p> <p>2 based upon a contract completion date of</p> <p>3 September 24, 2017, correct?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. So I just want to get that timeline in</p> <p>6 front of you and we'll come back to that. But</p> <p>7 you were -- I believe -- let me just ask the</p> <p>8 question again.</p> <p>9 You're aware that the government's own</p> <p>10 subcontractor was not arriving to the contract</p> <p>11 site until January of 2018 for its TSS work?</p> <p>12 <b>A. I was not aware of that.</b></p> <p>13 Q. Would that impact your decision to</p> <p>14 assess liquidated damages as of September 24?</p> <p>15 <b>A. I would have to review the</b></p> <p>16 <b>circumstances and see what I think at that point</b></p> <p>17 <b>with the contract before us.</b></p> <p>18 MS. HOSTETLER: Would you show the</p> <p>19 witness Exhibit 72.</p> <p>20 Q. Please take a minute. That's an email</p> <p>21 string between you and Ms. Neal dated August 31,</p> <p>22 2017. Take a minute and look at that. I have</p>	203	<p>1 getting that on to the project site, correct?</p> <p>2 <b>A. That option, yes.</b></p> <p>3 Q. Did that delay the project in any way,</p> <p>4 do you know?</p> <p>5 <b>A. I'm not sure.</b></p> <p>6 Q. Do you know what Ms. Vivian was --</p> <p>7 excuse me -- what Ms. Neal was referring to when</p> <p>8 she says there are performance issues on both</p> <p>9 sides of the contract?</p> <p>10 <b>A. That the contract was affected by the</b></p> <p>11 <b>government and by the contractor, as far as</b></p> <p>12 <b>performance goes.</b></p> <p>13 Q. And do you know what the performance</p> <p>14 issues on the government's side are -- were?</p> <p>15 <b>A. No, I don't.</b></p> <p>16 Q. The court reporter will show you</p> <p>17 what's been marked as Exhibit 113 to your</p> <p>18 deposition which is an email string, that I don't</p> <p>19 believe you're on, from November -- from January</p> <p>20 of 2018.</p> <p>21 (Exhibit 113 marked for identification</p> <p>22 and attached to the transcript.)</p>
202	<p>1 just a few questions to ask.</p> <p>2 <b>A. (Reviewing.) Okay.</b></p> <p>3 Q. So does this refresh your recollection</p> <p>4 that the government was required to furnish</p> <p>5 certain signal and power cabling related to the</p> <p>6 TSS?</p> <p>7 MR. WAX: I'll object.</p> <p>8 <b>A. Well, in accordance with the reading</b></p> <p>9 <b>of this email, yes.</b></p> <p>10 Q. And that as of -- this is an email</p> <p>11 string in August of 2017 where internally the</p> <p>12 government's trying to decide what the best</p> <p>13 course of action is as a result?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. And actually Ms. Neal states to</p> <p>16 Mr. Prior, copied to you, since the project is</p> <p>17 behind and there are performance issues on both</p> <p>18 sides of the contract, she suggests a certain</p> <p>19 option, correct?</p> <p>20 <b>A. Yes, correct.</b></p> <p>21 Q. And that option is that OBO is going</p> <p>22 to take care of procuring the materials and</p>	204	<p>1 MR. WAX: Did you give me two?</p> <p>2 MS. HOSTETLER: I may have.</p> <p>3 BY MS. HOSTETLER:</p> <p>4 Q. Take a look and let me know when</p> <p>5 you're ready to answer questions.</p> <p>6 <b>A. (Reviewing.) I'm done.</b></p> <p>7 Q. So does this refresh any recollection</p> <p>8 you may have as to when the government</p> <p>9 anticipated having their portion of the TSS work</p> <p>10 done?</p> <p>11 <b>A. Well, when I read this email, I see</b></p> <p>12 <b>that they thought the contractor for TSS would</b></p> <p>13 <b>arrive in January 2018.</b></p> <p>14 Q. And the fact that the government</p> <p>15 hadn't completed their portion of the TSS work at</p> <p>16 least by January, would that have any impact on</p> <p>17 your assessment of liquidated damages as of</p> <p>18 September 24, 2018?</p> <p>19 <b>A. Well, I would have to look at the</b></p> <p>20 <b>circumstances that drove the government's TSS</b></p> <p>21 <b>completion to January to see if that had an</b></p> <p>22 <b>effect on anything else.</b></p>

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52 (205 to 208)

205	<p>1 Q. And did you look into that?</p> <p>2 <b>A. No, I did not.</b></p> <p>3 Q. Were you even aware of that?</p> <p>4 <b>A. No, I was not.</b></p> <p>5 Q. Did any of your technical team,</p> <p>6 Mr. Skov or anyone else at OBO, alert you to any</p> <p>7 of the TSS issues?</p> <p>8 <b>A. Not that I recall.</b></p> <p>9 Q. Do you recall if Ms. Neal alerted you</p> <p>10 to those TSS issues?</p> <p>11 <b>A. Not that I recall.</b></p> <p>12 Q. As part of the TSS there's a video</p> <p>13 that goes along with that DVR that goes along</p> <p>14 with that TSS. It's a security video. Do you</p> <p>15 have any knowledge of that?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Do you know when that actually arrived</p> <p>18 on the project site?</p> <p>19 <b>A. No, I don't.</b></p> <p>20 Q. So the court reporter's showing you</p> <p>21 what's been previously marked as Exhibit 76,</p> <p>22 which is an email string between Mr. Skov and a</p>	207	<p>1 <b>integration.</b></p> <p>2 Q. Do you know if that TSS -- the DVR was</p> <p>3 required in order for the Marines to occupy the</p> <p>4 MSGR?</p> <p>5 <b>A. I do not.</b></p> <p>6 MR. WAX: I'm going to ask Jeff</p> <p>7 whether it needs to be redacted. Can you just</p> <p>8 sort make an internal note about that yourself?</p> <p>9 MS. HOSTETLER: We discussed this last</p> <p>10 Friday.</p> <p>11 MR. WAX: Oh, you did?</p> <p>12 MS. HOSTETLER: This was in Ms. Neal's</p> <p>13 deposition last Friday.</p> <p>14 MR. WAX: Okay. Well, he might have</p> <p>15 overlooked it or I might just be overly cautious.</p> <p>16 You have a protective order, right?</p> <p>17 MS. HOSTETLER: Right. Exactly.</p> <p>18 MR. WAX: Because it's not marked SBU.</p> <p>19 MS. HOSTETLER: Right.</p> <p>20 MR. WAX: Does your protective order</p> <p>21 just say everything within and until later, or</p> <p>22 are you specifically marking them on a</p>
206	<p>1 Raymond Rines, R-I-N-E-S, USmax TSS punch list.</p> <p>2 And let me know when you've had a chance to look</p> <p>3 at that.</p> <p>4 <b>A. (Reviewing.)</b></p> <p>5 MR. WAX: So this -- Jeff's seen this</p> <p>6 already, right? We don't have to worry about</p> <p>7 redacting it.</p> <p>8 MS. HOSTETLER: Is Mr. Rines an</p> <p>9 attorney?</p> <p>10 MR. WAX: Jeff I said.</p> <p>11 MS. HOSTETLER: Right. Is Mr. Rines</p> <p>12 an attorney?</p> <p>13 MR. WAX: Redaction for privilege</p> <p>14 reasons.</p> <p>15 <b>A. Yes, I'm done.</b></p> <p>16 Q. So based upon this email, it appears</p> <p>17 that the TSS DVR that was delivered wasn't even</p> <p>18 on site on May 19, 2018, correct, and that was</p> <p>19 part of the TSS solution or the TSS work?</p> <p>20 MR. WAX: I'm going to object to form.</p> <p>21 <b>A. I'm not sure. I'm not sure how this</b></p> <p>22 <b>video master station plays into the whole system</b></p>	208	<p>1 document-by-document basis?</p> <p>2 MS. HOSTETLER: We're marking them</p> <p>3 document-by-document, but portions of the</p> <p>4 deposition can be marked five days after.</p> <p>5 MR. WAX: Okay.</p> <p>6 Q. So the court reporter's handed you</p> <p>7 what was previously marked as Exhibit 73. And</p> <p>8 again, I realize, sir, you're not on these</p> <p>9 emails. But I'm looking specifically for the</p> <p>10 second email down where Mr. Skov is making a</p> <p>11 reference to the TSS installation. And let me</p> <p>12 know when you're ready for a couple questions</p> <p>13 about that.</p> <p>14 <b>A. (Reviewing.) I'm ready.</b></p> <p>15 Q. So Mr. Skov is reporting to Mr. Payne</p> <p>16 that it looks like the TSS installation will be</p> <p>17 complete on May 4 other than the L and L portion.</p> <p>18 Let me ask you first of all, do you</p> <p>19 know what that means, L and L, lock and leave?</p> <p>20 Does that have any meaning to you?</p> <p>21 <b>A. No, none.</b></p> <p>22 MR. WAX: I know you said on, but I</p>

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209	<p>1 think you mean on or about.</p> <p>2 MS. HOSTETLER: Oh, is that what that</p> <p>3 is, o slash, on or about?</p> <p>4 MR. WAX: Yes.</p> <p>5 MS. HOSTETLER: Thank you.</p> <p>6 Q. Let me read that again so the record's</p> <p>7 clear.</p> <p>8 <b>A. Okay.</b></p> <p>9 Q. It says -- Mr. Skov is saying to Dan,</p> <p>10 quote, It looks like the TSS installation will be</p> <p>11 complete on or about May 4 (other than the L and</p> <p>12 L).</p> <p>13 And for the record, again do you have</p> <p>14 any idea what the L and L portion is?</p> <p>15 <b>A. I have no idea.</b></p> <p>16 Q. Mr. Skov goes on to say that the</p> <p>17 remaining piece of the puzzle for the MSGR and</p> <p>18 CES are the permanent cores and keys.</p> <p>19 Is there a relationship between the</p> <p>20 permanent cores and keys and the TSS?</p> <p>21 <b>A. Well, the permanent cores are door</b></p> <p>22 <b>locks. And of course keys go to the door lock.</b></p>	211	<p>1 <b>but I don't remember what position he had.</b></p> <p>2 Q. But he was on site in Guayaquil?</p> <p>3 <b>A. I don't know.</b></p> <p>4 Q. Was working on this project, at least?</p> <p>5 <b>A. Involved in some way, yes.</b></p> <p>6 Q. There's a discussion in this email</p> <p>7 about getting occupancy for the MSGR so the</p> <p>8 Marines could occupy the building, correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. And Mr. Peterson suggests giving</p> <p>11 Montage a conditional substantial completion</p> <p>12 letter. And Mr. Skov says, quote, Better a</p> <p>13 conditional occupancy permit cable to post than a</p> <p>14 conditional substantial completion to Montage.</p> <p>15 Do you see that?</p> <p>16 <b>A. Yes, I do.</b></p> <p>17 Q. Do you know why he would be making</p> <p>18 that distinction or that recommendation?</p> <p>19 <b>A. No.</b></p> <p>20 MR. WAX: I would object to form.</p> <p>21 Q. Was there an effort by Mr. Skov or OBO</p> <p>22 to delay substantial completion?</p>
210	<p>1 <b>But I think the TSS has to be tied to the -- to</b></p> <p>2 <b>the door locks so that the Marine or anybody</b></p> <p>3 <b>would know if a door isn't locked.</b></p> <p>4 Q. So is it fair to say then you couldn't</p> <p>5 complete the key schedule until the TSS was</p> <p>6 complete?</p> <p>7 <b>A. I'm not sure.</b></p> <p>8 (Exhibit 114 marked for identification</p> <p>9 and attached to the transcript.)</p> <p>10 Q. Handing you what's been marked as</p> <p>11 Exhibit 114, which is an email string between</p> <p>12 Mr. Skov and Sean Peterson involving the</p> <p>13 Guayaquil project, and ask you to take a look.</p> <p>14 I'm going to ask you about that first section up</p> <p>15 there but you can read the whole document.</p> <p>16 <b>A. Okay.</b></p> <p>17 MR. WAX: That's 114?</p> <p>18 MS. HOSTETLER: Yes.</p> <p>19 <b>A. (Reviewing.) Yes.</b></p> <p>20 Q. So this is a discussion with Mr. Skov</p> <p>21 and a Sean Peterson. Do you know who he is?</p> <p>22 <b>A. Sean Peterson. I remember the name</b></p>	212	<p>1 <b>A. Not that I know of.</b></p> <p>2 Q. You do see in the sentence above that</p> <p>3 Mr. Skov makes the distinction that, quote, We</p> <p>4 are faced -- the distinction we are faced with is</p> <p>5 that the items that hold up the certificate of</p> <p>6 substantial completion from Montage are not fire</p> <p>7 and life-safety items.</p> <p>8 Do you see that?</p> <p>9 MR. WAX: The word "up" is not in that</p> <p>10 sentence. You said "that hold up."</p> <p>11 MS. HOSTETLER: Oh, thank you.</p> <p>12 Q. "The distinction we are faced with is</p> <p>13 that the items that hold the certificate of</p> <p>14 substantial completion from Montage are not fire</p> <p>15 and life-safety items."</p> <p>16 Do you see that, sir?</p> <p>17 <b>A. I see that sentence, yes.</b></p> <p>18 Q. Is it your understanding that if there</p> <p>19 aren't fire and life-safety items and the project</p> <p>20 is 90-percent complete, that substantial</p> <p>21 completion would be reasonable?</p> <p>22 MR. WAX: I'm going to object to the</p>

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54 (213 to 216)

<p style="text-align: right;">213</p> <p>1 form.</p> <p>2 <b>A. It depends on what isn't complete in</b></p> <p>3 <b>that five percent.</b></p> <p>4 Q. And do you know as of April 30 what</p> <p>5 was not complete?</p> <p>6 <b>A. I'm not sure.</b></p> <p>7 Q. But it's fair to say Mr. Skov would</p> <p>8 know whether or not those issues were fire and</p> <p>9 life-safety items, correct?</p> <p>10 MR. WAX: I'm going to object to form.</p> <p>11 <b>A. He should know what's not complete in</b></p> <p>12 <b>the project.</b></p> <p>13 Q. And so when he says they're not fire</p> <p>14 or life safety, we should believe that that's</p> <p>15 accurate?</p> <p>16 <b>A. If that's what he intends to say, yes.</b></p> <p>17 Q. And as of April of 2018, do you know</p> <p>18 what percent completion, according to the payment</p> <p>19 applications, this project was?</p> <p>20 <b>A. No, I don't.</b></p> <p>21 Q. Have you ever looked at the payment</p> <p>22 applications?</p>	<p style="text-align: right;">215</p> <p>1 <b>management.</b></p> <p>2 Q. Would you take a look at Exhibit 77.</p> <p>3 I'll show you what's been marked as Exhibit 77,</p> <p>4 which is an email string between Mr. Skov and</p> <p>5 Mr. Prior and Sholeh Lee -- I may be</p> <p>6 mispronouncing her name -- on July 6, 2018. Take</p> <p>7 a few minutes and review that document.</p> <p>8 <b>A. (Reviewing.) Yes, ma'am.</b></p> <p>9 Q. So Ms. Lee, is it pronounced Sholeh?</p> <p>10 <b>A. Sholeh.</b></p> <p>11 Q. So Ms. Lee replaced Mr. Vazquez on</p> <p>12 this project. Is that correct?</p> <p>13 <b>A. I believe so.</b></p> <p>14 Q. So that means Ms. Lee is Mr. Skov's</p> <p>15 immediate superior, correct?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. So Ms. Lee at OBO is writing to</p> <p>18 Mr. Skov and others. And she says that, "If the</p> <p>19 United States government (USG) can occupy</p> <p>20 buildings D and F, then we should." And she goes</p> <p>21 on to say, "If we are occupying the MSGR, which</p> <p>22 is personnel-occupied building but not occupying</p>
<p style="text-align: right;">214</p> <p>1 <b>A. No, I haven't.</b></p> <p>2 Q. Are you involved in that process at</p> <p>3 all?</p> <p>4 <b>A. No, I'm not.</b></p> <p>5 Q. And if the payment applications show</p> <p>6 that, as against the schedule of values, that</p> <p>7 Montage was being paid 99 percent as of April of</p> <p>8 2018, and there are not fire and life-safety</p> <p>9 items at issue, can you explain to me why</p> <p>10 substantial completion is not granted?</p> <p>11 <b>A. Once again, it depends on what items</b></p> <p>12 <b>aren't complete. Because if the building can't</b></p> <p>13 <b>be occupied for the intended purpose, then it</b></p> <p>14 <b>can't be declared substantially complete.</b></p> <p>15 Q. But you see here there's a discussion</p> <p>16 that it can be occupied, correct, or at least the</p> <p>17 MSGR can be occupied?</p> <p>18 <b>A. They're talking about occupancy permit</b></p> <p>19 <b>and whether they can get one or not, but they're</b></p> <p>20 <b>not the deciders.</b></p> <p>21 Q. Who's the decider for that?</p> <p>22 <b>A. It's the assistant secretary for</b></p>	<p style="text-align: right;">216</p> <p>1 D and F, which are shops and storage, we would</p> <p>2 need to have a written justification on why."</p> <p>3 This is July of 2018. Did you ever</p> <p>4 see any written justification such as Ms. Lee is</p> <p>5 suggesting in this email?</p> <p>6 <b>A. No, I didn't.</b></p> <p>7 Q. I ask you to take a look at -- so</p> <p>8 who's the MO in that sentence?</p> <p>9 <b>A. I guess --</b></p> <p>10 Q. "The MO is on board not occupying."</p> <p>11 She's quoting what Mr. Skov was saying below.</p> <p>12 <b>A. Management officer.</b></p> <p>13 Q. So who is that?</p> <p>14 <b>A. I don't know who it is. It's someone</b></p> <p>15 <b>at post, at the embassy.</b></p> <p>16 Q. And so Mr. Skov was reporting that the</p> <p>17 management officer was not on board occupying</p> <p>18 those buildings, and Ms. Lee is coming back and</p> <p>19 saying, well, we need a written justification?</p> <p>20 MR. WAX: I'm going to object as to</p> <p>21 form.</p> <p>22 Q. Correct?</p>



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55 (217 to 220)

<p style="text-align: right;">217</p> <p><b>1 A. That's correct.</b></p> <p>2 Q. And Mr. Skov's basis for what he says</p> <p>3 the MO is on board with not occupying is because</p> <p>4 of the permanent nonsecure cores, correct?</p> <p><b>5 A. Correct.</b></p> <p>6 Q. That that was the issue holding it up?</p> <p><b>7 A. Yes.</b></p> <p>8 Q. Do you know if there ever was -- well,</p> <p>9 strike that. You weren't on this so you wouldn't</p> <p>10 know if there was a response.</p> <p>11 Were you aware of this issue at all?</p> <p><b>12 A. Not that I recall, no.</b></p> <p>13 Q. I ask you to take a look at</p> <p>14 Exhibit 78. And this again is an email between</p> <p>15 Ms. Lee and Mr. Skov. And take a couple minutes.</p> <p>16 I'm going to ask you about that top email, but</p> <p>17 read as much of it as you want.</p> <p><b>18 A. I'm ready.</b></p> <p>19 Q. So this is a couple days later.</p> <p>20 Ms. Lee is emailing Mr. Skov and says, "The</p> <p>21 certificate of occupancy is issued by OBO for a</p> <p>22 Marine house. See attached, which includes the</p>	<p style="text-align: right;">219</p> <p><b>1 A. It would -- the separate TSS</b></p> <p><b>2 contractor, it would look at that work as well.</b></p> <p>3 Q. Then it says PD substantial completion</p> <p>4 letter. What is that?</p> <p><b>5 A. That's the COR's substantial</b></p> <p><b>6 completion letter saying that the project is</b></p> <p><b>7 substantially complete.</b></p> <p>8 Q. And then there's an OBO fire</p> <p>9 compliance memo. What do you understand that to</p> <p>10 be?</p> <p><b>11 A. That's OBO fire inspectors have gone</b></p> <p><b>12 down and looked at the project to ensure that it</b></p> <p><b>13 is compliant with all safety requirements.</b></p> <p>14 Q. And so all of these issues are OBO's</p> <p>15 responsibility leading up to substantial</p> <p>16 completion, correct?</p> <p><b>17 A. Not the DS. DS is separate.</b></p> <p>18 Q. Fair enough.</p> <p>19 Were you aware of this discussion in</p> <p>20 July of 2018 regarding the timing of substantial</p> <p>21 completion?</p> <p><b>22 A. No, I was not.</b></p>
<p style="text-align: right;">218</p> <p>1 clearances. Note my previous email regarding</p> <p>2 occupying buildings D and F. We need a</p> <p>3 substantial completion on the project unless</p> <p>4 there's a compelling justification to not occupy</p> <p>5 D and F, which I have not seen thus far."</p> <p>6 Have you ever seen a compelling</p> <p>7 justification not to occupy D and F?</p> <p>8 MR. WAX: I'm going to object as to</p> <p>9 form.</p> <p><b>10 A. Not that I recall.</b></p> <p>11 Q. Ms. Lee goes on to say that, "We need</p> <p>12 these items: DS substantial compliance cable,</p> <p>13 final." Do you know what that is?</p> <p><b>14 A. Diplomatic security performs an</b></p> <p><b>15 inspection of the facilities to ensure that the</b></p> <p><b>16 office's security and safety is -- security is</b></p> <p><b>17 installed in the building. And they'll issue a</b></p> <p><b>18 compliance certificate saying that yes, they've</b></p> <p><b>19 reviewed it and they found it to be compliant.</b></p> <p>20 Q. And their compliance is more than just</p> <p>21 what Montage is doing, it involves other security</p> <p>22 issues as well?</p>	<p style="text-align: right;">220</p> <p>1 Q. At the time you were the CO on this</p> <p>2 project, correct?</p> <p><b>3 A. Correct.</b></p> <p>4 Q. Are these the types of issues that you</p> <p>5 should have been made aware of as you were</p> <p>6 getting closer -- as the contractor was getting</p> <p>7 closer to substantial completion?</p> <p>8 MR. WAX: Objection to form.</p> <p><b>9 A. No. It appears to be OBO and others</b></p> <p><b>10 working to assure that the building is complete</b></p> <p><b>11 before we issue substantial completion. That's</b></p> <p><b>12 their duty.</b></p> <p>13 Q. So if that's July, the first</p> <p>14 substantial completion wasn't issued until</p> <p>15 October, correct?</p> <p><b>16 A. Correct.</b></p> <p>17 Q. What held it up?</p> <p><b>18 A. I'm not sure.</b></p> <p>19 Q. Have you looked into that?</p> <p><b>20 A. No, I have not. I'll show you what</b></p> <p><b>21 was previously marked as Exhibit 81. And I will</b></p> <p><b>22 say for the record, there are a lot of</b></p>

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56 (221 to 224)

221	<p>1 <b>attachments to this. And if you want to see them</b></p> <p>2 <b>I have them and you can see them. It's an</b></p> <p>3 <b>October 8, 2018 letter addressed to Ms. Donna</b></p> <p>4 <b>Neal contracting officer from Sina Moayed.</b></p> <p>5 MR. WAX: Is this the one, the line of</p> <p>6 questioning you had, or are we moving to a new</p> <p>7 topic?</p> <p>8 MS. HOSTETLER: No, we're still on</p> <p>9 substantial completion.</p> <p>10 Q. Let me just start, have you seen this</p> <p>11 document?</p> <p>12 <b>A. Not that I recall.</b></p> <p>13 Q. Let me ask you, as of October 8, 2018</p> <p>14 you were the contracting officer, correct?</p> <p>15 <b>A. Yes, correct.</b></p> <p>16 Q. Was this something that -- and I'm</p> <p>17 happy to let you read it -- that Donna Neal</p> <p>18 should have passed along to you for a response or</p> <p>19 is this something she should have handled on her</p> <p>20 own?</p> <p>21 <b>A. It's something she should have handled</b></p> <p>22 <b>on her own as experienced personnel.</b></p>	223
222	<p>1 and then we can come back to this.</p> <p>2 (A recess was taken.)</p> <p>3 (Exhibit 115 marked for identification</p> <p>4 and attached to the transcript.)</p> <p>5 BY MS. HOSTETLER:</p> <p>6 Q. Mr. Vivian, let me ask you -- before</p> <p>7 we go to Exhibit 115, let me ask you to go back</p> <p>8 to Exhibit 62 which is your assessment of</p> <p>9 liquidated damages letter.</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. So Mr. Vivian, you have in front of</p> <p>12 you Exhibit 62, and that's where you've assessed</p> <p>13 liquidated damages based on a completion date of</p> <p>14 September 24, 2017.</p> <p>15 First of all, did any of the</p> <p>16 discussion that we just had or the documents that</p> <p>17 you looked at that dealt with TSS and doors and</p> <p>18 cores make you question or think that there might</p> <p>19 be more information that you need in order to</p> <p>20 assess liquidated damages as of September 24,</p> <p>21 2017?</p> <p>22 <b>A. Not at this time.</b></p>	224
222	<p>1 Q. If you haven't seen it, I'm not going</p> <p>2 to ask you about it, but I'm happy to let you</p> <p>3 peruse it to make sure that you haven't seen it.</p> <p>4 <b>A. Oh, no, I haven't seen it.</b></p> <p>5 Q. Do you recall in this October --</p> <p>6 strike that.</p> <p>7 You were the contracting officer in</p> <p>8 the fall of 2017, correct, after Ms. Neal's</p> <p>9 warrant expired in September. Is that correct?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. Do you recall Montage filing their</p> <p>12 time claims and request for contracting officer's</p> <p>13 decision in the fall of 2017?</p> <p>14 <b>A. No, I don't.</b></p> <p>15 Q. Do you recall being part of any</p> <p>16 discussion with Ms. Neal to request Montage to</p> <p>17 pull back their claims?</p> <p>18 <b>A. No, I don't.</b></p> <p>19 MS. HOSTETLER: Did you want to take a</p> <p>20 break?</p> <p>21 MR. WAX: I did.</p> <p>22 MS. HOSTETLER: We can do the break</p>	224
224	<p>1 Q. So how is the amount of the liquidated</p> <p>2 damage determined, the per-day rate?</p> <p>3 <b>A. The per-day rate is OBO's costs for</b></p> <p>4 <b>actually keeping personnel at site to surveille</b></p> <p>5 <b>the contractor's performance.</b></p> <p>6 Q. And is this an amount that's set forth</p> <p>7 in the contract?</p> <p>8 <b>A. Yes, it is.</b></p> <p>9 Q. And have you looked in the contract to</p> <p>10 see where that is set forth?</p> <p>11 <b>A. Yes, I have.</b></p> <p>12 Q. And correct that it references it as</p> <p>13 Guayaquil, Mexico. Do you recollect that?</p> <p>14 <b>A. Guayaquil, Mexico?</b></p> <p>15 Q. We can pull that. I have to find out</p> <p>16 which document it is here.</p> <p>17 <b>A. F2?</b></p> <p>18 Q. Yeah, it's F2, but I need to find the</p> <p>19 exhibit in here.</p> <p>20 MS. HOSTETLER: With your permission,</p> <p>21 may I just show him my copy just to refresh</p> <p>22 your --</p>	224

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57 (225 to 228)

225	<p>1 MR. WAX: Yeah, you can reference it</p> <p>2 on the record.</p> <p>3 Q. I've got page 19. Take a look at that</p> <p>4 document. Does that refresh your recollection as</p> <p>5 to the amount set forth in the contract as far as</p> <p>6 the assessment of liquidated damages?</p> <p>7 <b>A. Yes, it does.</b></p> <p>8 Q. And doesn't it refer to Mexico as</p> <p>9 well?</p> <p>10 <b>A. Yes, it does.</b></p> <p>11 Q. So did you look to see if that was an</p> <p>12 error on the Mexico side or on the Guayaquil</p> <p>13 side?</p> <p>14 <b>A. Oh, it's a typo in the Guayaquil</b></p> <p>15 <b>contract. So Mexico is the typo.</b></p> <p>16 Q. So this is the accurate amount for</p> <p>17 Guayaquil?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. And do you know how that rate was</p> <p>20 determined, the build up of that rate?</p> <p>21 <b>A. Yes. OBO calculates that rate.</b></p> <p>22 Q. And so there's a document that says</p>	227	<p>1 describe it?</p> <p>2 MS. HOSTETLER: So just the -- I</p> <p>3 guess --</p> <p>4 MR. WAX: Calculation of LDs?</p> <p>5 MS. HOSTETLER: -- it would be the OBO</p> <p>6 calculation --</p> <p>7 THE WITNESS: Yeah, LDs, right.</p> <p>8 MS. HOSTETLER: -- for the daily rate.</p> <p>9 THE WITNESS: Correct.</p> <p>10 (Document/data request.)</p> <p>11 BY MS. HOSTETLER:</p> <p>12 Q. And Mr. Vivian, you don't have any</p> <p>13 input into that calculation?</p> <p>14 <b>A. No, I don't.</b></p> <p>15 Q. And that deals with on-site personnel</p> <p>16 costs?</p> <p>17 <b>A. Correct. Yes.</b></p> <p>18 Q. And so when you -- SO let's look at</p> <p>19 your Exhibit 62. When you assess liquidated</p> <p>20 damages on January 28, 2019 back from</p> <p>21 September 24, 2017, do you have -- did you look</p> <p>22 or investigate as to whether or not there were</p>
226	<p>1 here's what the rate is and you're given that in</p> <p>2 contracting to put into the contract, correct?</p> <p>3 <b>A. Correct.</b></p> <p>4 MS. HOSTETLER: I don't think we've</p> <p>5 seen that, but I would like to see that. So if</p> <p>6 you'll add that to your list.</p> <p>7 MR. WAX: You know, my list is getting</p> <p>8 kind of long and wacky. So --</p> <p>9 MS. HOSTETLER: It cannot be anywhere</p> <p>10 near as long as the list we had in Nela's</p> <p>11 deposition.</p> <p>12 MR. WAX: But what I would suggest,</p> <p>13 and I'm going to do my best --</p> <p>14 MS. HOSTETLER: The court reporter</p> <p>15 marks every time there's a request for a</p> <p>16 document.</p> <p>17 MR. WAX: No, no, I'm aware of that.</p> <p>18 But I don't know whether we've gotten authority</p> <p>19 to pay them yet. So it might make sense for you</p> <p>20 to do a letter to Jeff.</p> <p>21 MS. HOSTETLER: We'll do that too.</p> <p>22 MR. WAX: But how would you want me to</p>	228	<p>1 on-site personnel from the 24th of September of</p> <p>2 2017 up until the completion of the assessment</p> <p>3 period?</p> <p>4 <b>A. No, I did not.</b></p> <p>5 Q. You're aware that Mr. Skov left the</p> <p>6 project during that time period, correct?</p> <p>7 <b>A. Yes, I am.</b></p> <p>8 Q. And that there was no other COR or a</p> <p>9 PD that went to Guayaquil?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. Did you make any determination as a</p> <p>12 result of any proration that would be</p> <p>13 appropriate?</p> <p>14 <b>A. No, I did not.</b></p> <p>15 Q. Where does the September 24, 2017 date</p> <p>16 come from?</p> <p>17 <b>A. That's the contract completion date</b></p> <p>18 <b>established in one of the modifications that</b></p> <p>19 <b>changed the time.</b></p> <p>20 Q. Does the government claim that all the</p> <p>21 delay past September 24, 2017 was the sole</p> <p>22 responsibility of Montage?</p>

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58 (229 to 232)

<p style="text-align: right;">229</p> <p>1 <b>A. That's correct.</b></p> <p>2 Q. Does the government own any delay from</p> <p>3 September 24, 2017 until substantial completion</p> <p>4 was issued?</p> <p>5 MR. WAX: Objection to form.</p> <p>6 <b>A. Not that I'm aware of.</b></p> <p>7 Q. And just since there was an objection.</p> <p>8 Is the government responsible for any delay past</p> <p>9 September 24, 2017 on this project?</p> <p>10 <b>A. Not that I'm aware of.</b></p> <p>11 Q. But you are aware that you accepted a</p> <p>12 schedule and paid the contractor on a schedule</p> <p>13 with a February 2018 substantial completion date?</p> <p>14 <b>A. Would you repeat that question?</b></p> <p>15 Q. Uh-huh. But you're aware that the</p> <p>16 government accepted a schedule and paid the</p> <p>17 contractor on a schedule with a February 2018</p> <p>18 substantial completion date?</p> <p>19 MR. WAX: I object as to form.</p> <p>20 <b>A. I'm not sure about that.</b></p> <p>21 Q. Prior to assessing the liquidated</p> <p>22 damages, did you look at any of the TIAs that had</p>	<p style="text-align: right;">231</p> <p>1 <b>A. I'm not sure. Ms. Neal, yes. Not</b></p> <p>2 <b>Mr. Skov.</b></p> <p>3 Q. And was Ms. Neal's recommendation to</p> <p>4 you oral or in writing?</p> <p>5 <b>A. Oral, I believe.</b></p> <p>6 Q. And what did Ms. Neal recommend to</p> <p>7 you?</p> <p>8 <b>A. Said the contractor late and</b></p> <p>9 <b>liquidated damages were authorized.</b></p> <p>10 Q. And any further discussion on that?</p> <p>11 <b>A. Some discussion with counsel.</b></p> <p>12 Q. But with Ms. Neal any further</p> <p>13 discussion as to the basis of why she thought</p> <p>14 liquidated damages were appropriate to assess?</p> <p>15 <b>A. Not particularly that I recall.</b></p> <p>16 Q. And when was that discussion vis-a-vis</p> <p>17 your letter of January 28, 2019?</p> <p>18 <b>A. It was sometime prior to the issuance</b></p> <p>19 <b>of the letter, but I'm not sure.</b></p> <p>20 Q. Was that a face-to-face meeting?</p> <p>21 <b>A. Yes, I believe it was.</b></p> <p>22 Q. Do you recall how long that meeting</p>
<p style="text-align: right;">230</p> <p>1 been submitted on this project?</p> <p>2 <b>A. No, I did not analyze them myself.</b></p> <p>3 Q. Did you look at any of the attachments</p> <p>4 to the TIAs?</p> <p>5 <b>A. I did not.</b></p> <p>6 Q. What investigation, if any, did you do</p> <p>7 as to the causes of delay beginning on</p> <p>8 September -- or the cause of delay on this job?</p> <p>9 <b>A. I relied on the -- on the team that</b></p> <p>10 <b>was actually reviewing the TIAs as well as the</b></p> <p>11 <b>scheduling expert that we hired to assist.</b></p> <p>12 Q. That's RMCI, Resource Management</p> <p>13 Consultant, something like that?</p> <p>14 <b>A. I'm not sure which one.</b></p> <p>15 Q. Did you read their report?</p> <p>16 <b>A. No, I did not.</b></p> <p>17 Q. So relied on Mr. Skov and Ms. Neal to</p> <p>18 tell you what was in that report?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. Did you get a recommendation from</p> <p>21 Mr. Skov or Mr. Neal -- Mr. Skov or Ms. Neal</p> <p>22 regarding the assessment of liquidated damages?</p>	<p style="text-align: right;">232</p> <p>1 lasted?</p> <p>2 <b>A. No, I don't.</b></p> <p>3 Q. How often do you assess liquidated</p> <p>4 damages?</p> <p>5 <b>A. Whenever the contract authorizes it</b></p> <p>6 <b>and the government is not responsible for the</b></p> <p>7 <b>delay.</b></p> <p>8 Q. Is it a more unusual circumstance or</p> <p>9 is it typical in your experience?</p> <p>10 <b>A. No, it's more unusual.</b></p> <p>11 Q. And prior to assessing these</p> <p>12 liquidated damages, did you go back and review</p> <p>13 any documents on ProjNet?</p> <p>14 <b>A. No, I did not.</b></p> <p>15 Q. Did you go back and review any of the</p> <p>16 documents on the shared drive that you had within</p> <p>17 your department?</p> <p>18 <b>A. No, I did not.</b></p> <p>19 Q. Did you look at the project schedules?</p> <p>20 <b>A. No, I did not.</b></p> <p>21 Q. Did you look at the schedule updates?</p> <p>22 <b>A. No.</b></p>

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59 (233 to 236)

233	<p>1 Q. Did you look at any of the</p> <p>2 correspondence from the contractor as to what was</p> <p>3 happening on the job?</p> <p>4 <b>A. No, I did not.</b></p> <p>5 Q. I asked you earlier about a project</p> <p>6 schedule that was accepted by the government</p> <p>7 showing a substantial completion date in February</p> <p>8 of 2018.</p> <p>9 Do you recollect any conversations or</p> <p>10 written communications with Ms. Neal regarding</p> <p>11 her request for a schedule update showing a</p> <p>12 substantial completion deadline of February 2018?</p> <p>13 <b>A. No, I don't.</b></p> <p>14 Q. Would you take a look at what has been</p> <p>15 marked as Exhibit 115 to your deposition. And</p> <p>16 let me know when you're ready for questions.</p> <p>17 It's October 23, 2017.</p> <p>18 <b>A. This one?</b></p> <p>19 Q. Yeah, it's right here.</p> <p>20 So Mr. Vivian, you've been handed by</p> <p>21 the court reporter an email string from Ms. Neal</p> <p>22 to you, remission of LDs, Guayaquil MSGR,</p>	235	<p>1 Q. Do you know if there was a</p> <p>2 negotiation?</p> <p>3 <b>A. I don't remember.</b></p> <p>4 Q. Ms. Neal goes on to say that Bill</p> <p>5 Prior's draft of the letter of intent to assess</p> <p>6 LDs, close quote. That letter was never sent,</p> <p>7 was it, sir?</p> <p>8 <b>A. I don't know.</b></p> <p>9 Q. Do you know if there ever was a letter</p> <p>10 to Montage -- strike that.</p> <p>11 Prior to your January 28, 2019 letter</p> <p>12 assessing liquidated damages, had Montage been</p> <p>13 put on notice that the performance period had</p> <p>14 expired and liquidated damages could be assessed?</p> <p>15 <b>A. I don't know.</b></p> <p>16 Q. Isn't that standard practice?</p> <p>17 <b>A. Usually, yes.</b></p> <p>18 Q. Did you follow-up with Ms. Neal about</p> <p>19 Montage pulling back their claim and agreeing to</p> <p>20 negotiate?</p> <p>21 <b>A. No, I did not.</b></p> <p>22 Q. Do you recall in the September/October</p>
234	<p>1 October 23, 2017. Take a minute and look at that</p> <p>2 and I want to ask you a few questions.</p> <p>3 <b>A. (Reviewing.)</b></p> <p>4 MR. WAX: When you make copies on two</p> <p>5 sides, is that how they were produced to you or</p> <p>6 is that just --</p> <p>7 MS. HOSTETLER: I have no idea.</p> <p>8 That's how I usually do it just to save paper.</p> <p>9 MR. WAX: Because I think it makes no</p> <p>10 sense.</p> <p>11 <b>A. Yes, I read it.</b></p> <p>12 Q. So does this refresh your recollection</p> <p>13 of -- that Montage had filed some claims in the</p> <p>14 fall of 2017?</p> <p>15 <b>A. I'm reading the email, but I don't</b></p> <p>16 <b>have recollection of that.</b></p> <p>17 Q. Ms. Neal says to you, quote, Montage</p> <p>18 did pull back their claim as requested and agreed</p> <p>19 to negotiate, close quote.</p> <p>20 Did you ask Ms. Neal to request</p> <p>21 Montage to pull back their claim and negotiate?</p> <p>22 <b>A. I don't recall.</b></p>	236	<p>1 time period that Ms. Neal met with Montage and</p> <p>2 discussed pulling back the claim and a resolution</p> <p>3 to the impasse of accessing the EOB?</p> <p>4 MR. WAX: I'm going to object as to</p> <p>5 the form.</p> <p>6 <b>A. No, I don't.</b></p> <p>7 Q. So counsel objected, so let me ask.</p> <p>8 During this time period wasn't there an issue</p> <p>9 that -- that Montage was saying that they need</p> <p>10 access to EOB and the government was saying you</p> <p>11 can't have access to EOB. Whatever reason there</p> <p>12 was this disagreement between the parties as to</p> <p>13 access of the EOB. Do you recollect that?</p> <p>14 <b>A. I remember something vaguely on that</b></p> <p>15 <b>subject, yes.</b></p> <p>16 Q. And do you recollect that Ms. Neal was</p> <p>17 trying to break that logjam?</p> <p>18 <b>A. That would have been her</b></p> <p>19 <b>responsibility, within the terms of the contract,</b></p> <p>20 <b>yes.</b></p> <p>21 Q. If you would take a look at what was</p> <p>22 previously marked as Exhibit 64.</p>



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60 (237 to 240)

237	<p>1 So the court reporter has put in front</p> <p>2 of you what was previously marked as Exhibit 64,</p> <p>3 which is an email between Donna Neal and Mr. Skov</p> <p>4 and Ms. Lee. Let me know when you're ready for</p> <p>5 questions.</p> <p>6 <b>A. Yes, I'm ready.</b></p> <p>7 Q. And so Ms. Neal is stating that she</p> <p>8 met with Montage and that they were going to</p> <p>9 submit a PES showing a February substantial</p> <p>10 completion, correct?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. And do you know for a fact that they</p> <p>13 did this?</p> <p>14 <b>A. I do not know.</b></p> <p>15 Q. And are you aware that OBO accepted</p> <p>16 this?</p> <p>17 <b>A. No, I'm not aware.</b></p> <p>18 Q. Are you aware of any of the</p> <p>19 circumstances as to why Mr. Skov was denying</p> <p>20 access to the EOB?</p> <p>21 <b>A. I do not recall, no.</b></p> <p>22 Q. Are you aware the beginning in the</p>	239	<p>1 MR. WAX: I don't see a Rendon. What</p> <p>2 am I missing?</p> <p>3 MS. HOSTETLER: First one.</p> <p>4 MR. WAX: Oh, sorry.</p> <p>5 Q. So Mr. Skov is advising Ms. Lee that</p> <p>6 the September 2017 PES submission Montage</p> <p>7 uploaded on October 30, 2017, correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. And Ms. -- he was responding to</p> <p>10 Ms. Lee's question of did Montage submit the</p> <p>11 schedule update showing the February completion</p> <p>12 date?</p> <p>13 <b>A. Yes, correct.</b></p> <p>14 Q. And he's saying yes, it happened?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Do you have any reason to believe that</p> <p>17 that didn't happen?</p> <p>18 <b>A. No.</b></p> <p>19 Q. And that's a September -- excuse me --</p> <p>20 a February 2018 schedule update.</p> <p>21 So take a look at Exhibit 67. So</p> <p>22 Exhibit 67 is an email between Ms. Neal, Ms. Lee</p>
238	<p>1 fall of 2017, all PES updates showed a February</p> <p>2 substantial completion date?</p> <p>3 <b>A. No, I'm not.</b></p> <p>4 Q. Would you take a look at Exhibit 65.</p> <p>5 Which is the narrative that goes with the</p> <p>6 schedule. And I can provide you with the</p> <p>7 schedule if that's helpful.</p> <p>8 Have you seen this document before?</p> <p>9 It's an October 19, 2017 -- dated October 19,</p> <p>10 2017, and it's a PES month September 2007 update</p> <p>11 narrative.</p> <p>12 <b>A. No, I have not seen this before.</b></p> <p>13 Q. This would be uploaded along with the</p> <p>14 actual schedule to ProjNet. Is that correct?</p> <p>15 <b>A. Yes, that's a possibility. Correct.</b></p> <p>16 Q. Let me ask you to take a look at</p> <p>17 Exhibit 65, previously marked as Exhibit 65.</p> <p>18 <b>A. That's the one I'm looking at.</b></p> <p>19 Q. Oh, Exhibit 66. Which is another</p> <p>20 series of emails with Mr. Skov. This one</p> <p>21 includes Mr. Rendon and then Ms. Lee and</p> <p>22 Ms. Neal.</p>	240	<p>1 and Ms. Lugo. Let me know when you're done</p> <p>2 reading it.</p> <p>3 <b>A. (Reviewing.) Yes.</b></p> <p>4 Q. So in December Ms. Neal is confirming</p> <p>5 to Montage that the project schedule updates show</p> <p>6 a February completion and that once Ms. Leah</p> <p>7 approves the schedule, then the government will</p> <p>8 begin processing some of the retainage to be</p> <p>9 released, correct?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. And in fact that schedule was approved</p> <p>12 and some retainage was released, was it not, sir?</p> <p>13 <b>A. I don't know.</b></p> <p>14 Q. Take a look at Exhibit 68. This is an</p> <p>15 email string in December of 2017 on release of</p> <p>16 retainage, which Ms. Neal said could only happen</p> <p>17 after Ms. Lee approved the schedule. Let me know</p> <p>18 when you're ready to answer questions.</p> <p>19 <b>A. (Reviewing.) Ready.</b></p> <p>20 Q. So once again we're talking about</p> <p>21 releasing the retainage based upon the February</p> <p>22 substantial completion schedule, February 2018</p>

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61 (241 to 244)

<p style="text-align: right;">241</p> <p>1 substantial completion schedule. Ms. Neal also</p> <p>2 requests Ms. Lee to look into issuing substantial</p> <p>3 completion for the MSGR, correct?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Do you know if that was done?</p> <p>6 <b>A. No, I don't.</b></p> <p>7 Q. She also references, "The contract</p> <p>8 states there can be per-building substantial</p> <p>9 completions issued."</p> <p>10 Were per-buildings substantial</p> <p>11 completions issued?</p> <p>12 <b>A. Not that I recall.</b></p> <p>13 Q. At the top Ms. Lee makes reference to</p> <p>14 discussing retainage between Ms. Lee and Ms. Neal</p> <p>15 because that has, quote, been a difficult issue</p> <p>16 in the past, close quote. Do you know what that</p> <p>17 reference is to?</p> <p>18 <b>A. No, I don't.</b></p> <p>19 Q. Was the retainage released?</p> <p>20 <b>A. I don't know.</b></p> <p>21 Q. Take a look at Exhibit 69. Exhibit 69</p> <p>22 is an email string between Mr. Skov, Ms. Lee and</p>	<p style="text-align: right;">243</p> <p>1 the government was releasing a portion of the</p> <p>2 retainage?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. So when you go back to your</p> <p>5 Exhibit 62, which is your liquidated damage</p> <p>6 assessment letter, if Ms. Neal and Mr. Skov and</p> <p>7 Ms. Lee are working on an accepted project</p> <p>8 schedule with a substantial completion date of</p> <p>9 February 2018, why are you assessing liquidated</p> <p>10 damages back to September 24, 2017?</p> <p>11 MR. WAX: Objection to form.</p> <p>12 <b>A. Because this was a negotiated</b></p> <p>13 <b>agreement to release retainage based on the</b></p> <p>14 <b>contractor providing an accurate schedule. So it</b></p> <p>15 <b>would not actually affect the actual performance</b></p> <p>16 <b>date in the contract.</b></p> <p>17 Q. So is it your testimony that the</p> <p>18 contractor should have known that the actual</p> <p>19 performance schedule was still September 24,</p> <p>20 2017?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And that the contractor should not</p>
<p style="text-align: right;">242</p> <p>1 Ms. Neal in December of 2017.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And so based upon the government</p> <p>4 accepting a project schedule showing a February</p> <p>5 completion, it's a February 2018 completion, the</p> <p>6 government is releasing \$371,469.96 in retention,</p> <p>7 correct?</p> <p>8 MR. WAX: Objection, form.</p> <p>9 <b>A. That's what it appears, yes.</b></p> <p>10 Q. Do you know for a fact that actually</p> <p>11 happened?</p> <p>12 <b>A. No, I don't.</b></p> <p>13 Q. Take a look at Exhibit 70. Exhibit 70</p> <p>14 is an email string between Montage and Mr. Skov</p> <p>15 where Mr. Skov advises Montage that in</p> <p>16 recognition of Montage's progress towards</p> <p>17 completion and the updated schedule showing</p> <p>18 February completion, retained earnings will begin</p> <p>19 to be released.</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. So it's fair to say that based upon a</p> <p>22 February substantial completion project schedule,</p>	<p style="text-align: right;">244</p> <p>1 have relied upon the government accepting the</p> <p>2 substantial completion date of February 2018?</p> <p>3 MR. WAX: Objection, form.</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Do you know if the contractor was ever</p> <p>6 told that?</p> <p>7 MR. WAX: Objection to form.</p> <p>8 <b>A. The contractor has a copy of the</b></p> <p>9 <b>contract with the established completion date in</b></p> <p>10 <b>it. So that date was not changed by modification</b></p> <p>11 <b>to the contract, so the contractor should have</b></p> <p>12 <b>known that the date was not changed.</b></p> <p>13 Q. And this was done as part -- started</p> <p>14 with this whole discussion of requesting the</p> <p>15 contractor pull back their claims so there could</p> <p>16 be some negotiation. Is that accurate?</p> <p>17 MR. WAX: Objection to form.</p> <p>18 <b>A. It appears so by the chain of emails,</b></p> <p>19 <b>yes.</b></p> <p>20 Q. And so was there any discussion of the</p> <p>21 contractor's claim?</p> <p>22 <b>A. I'm not sure.</b></p>

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62 (245 to 248)

<p style="text-align: right;">245</p> <p>1 Q. Were you involved in any discussion of</p> <p>2 the claim that the contractor agreed to pull</p> <p>3 back?</p> <p>4 <b>A. Not that I recall.</b></p> <p>5 Q. Are you aware of any discussion that</p> <p>6 Ms. Neal had with regard to the claim that the</p> <p>7 contractor agreed to pull back?</p> <p>8 <b>A. I'm not aware of any.</b></p> <p>9 Q. And so it's your testimony that the</p> <p>10 contract pulling back that claim had nothing to</p> <p>11 do with extending substantial completion to</p> <p>12 February?</p> <p>13 MR. WAX: Objection to form.</p> <p>14 <b>A. No, I'm not saying that.</b></p> <p>15 Q. So would it be fair to say that by the</p> <p>16 contractor pulling back that claim they</p> <p>17 thought -- he's going to object.</p> <p>18 Is it fair to say that the contractor</p> <p>19 pulling back that claim was part of the</p> <p>20 negotiation to have the parties agree to a</p> <p>21 February substantial completion date?</p> <p>22 MR. WAX: Objection to form.</p>	<p style="text-align: right;">247</p> <p>1 <b>A. I believe so, yeah.</b></p> <p>2 Q. Would you be surprised if the</p> <p>3 contractor was never afforded an opportunity to</p> <p>4 meet with Ms. Neal and Mr. Skov to discuss those</p> <p>5 claims?</p> <p>6 <b>A. Would I be surprised?</b></p> <p>7 Q. Surprised. You said you thought that</p> <p>8 was the reason why they pulled back their claim</p> <p>9 was to negotiate, right?</p> <p>10 <b>A. Yes --</b></p> <p>11 MR. WAX: Objection.</p> <p>12 <b>A. Yes, I would be surprised.</b></p> <p>13 Q. Were you ever advised by your team</p> <p>14 that they never sat down and negotiated?</p> <p>15 MR. WAX: Objection to form.</p> <p>16 <b>A. I was not.</b></p> <p>17 Q. Is that something that as a</p> <p>18 contracting officer you should have been made</p> <p>19 aware of?</p> <p>20 MR. WAX: Objection to form.</p> <p>21 <b>A. Yes.</b></p> <p>22 MS. HOSTETLER: I'm ready to start a</p>
<p style="text-align: right;">246</p> <p>1 <b>A. The contractor pulling back the claim</b></p> <p>2 <b>was in accordance with the team and the</b></p> <p>3 <b>contractor included, agreement to have</b></p> <p>4 <b>discussions rather than go straight to a</b></p> <p>5 <b>contracting officer's decision.</b></p> <p>6 Q. And were there such discussions?</p> <p>7 <b>A. I'm not sure. I would assume so. If</b></p> <p>8 <b>the team said -- if the contractor pulled back</b></p> <p>9 <b>the REA and the team said, hey, the contractor</b></p> <p>10 <b>pulled back the REA, which is in those emails,</b></p> <p>11 <b>then I would believe that the government team</b></p> <p>12 <b>followed through and had negotiations.</b></p> <p>13 Q. And sitting here today are you aware</p> <p>14 of any such negotiations?</p> <p>15 <b>A. I am not.</b></p> <p>16 Q. What did you understand the contractor</p> <p>17 pulled back?</p> <p>18 MR. WAX: Objection to form.</p> <p>19 <b>A. The contractor pulled back a request</b></p> <p>20 <b>for a contracting officer's final decision.</b></p> <p>21 Q. And that was on the extension of time,</p> <p>22 wasn't it, the time claims?</p>	<p style="text-align: right;">248</p> <p>1 new topic, if you want to take a five-minute</p> <p>2 break.</p> <p>3 MR. WAX: I want to go home. How much</p> <p>4 longer?</p> <p>5 MS. HOSTETLER: I'm moving. Do you</p> <p>6 want to take just a five-minute break and I'll</p> <p>7 mark a few exhibits and maybe we can be done?</p> <p>8 MR. WAX: Yeah.</p> <p>9 (A recess was taken.)</p> <p>10 (Exhibit 116 marked for identification</p> <p>11 and attached to the transcript.)</p> <p>12 BY MS. HOSTETLER:</p> <p>13 Q. Mr. Vivian, you received multiple</p> <p>14 requests, letters, emails from Montage asking</p> <p>15 them to remove Mr. Wright and Mr. Skov from this</p> <p>16 project, correct?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. So before you is Exhibit 116, which is</p> <p>19 potentially one of those documents. This is May</p> <p>20 of 2017. Take a minute and look at that and I'll</p> <p>21 ask you a few questions.</p> <p>22 <b>A. (Reviewing.) Yes.</b></p>

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63 (249 to 252)

249	<p>1 Q. So this email seems to be a request by</p> <p>2 Montage to -- or excuse me -- by the government</p> <p>3 to remove some Montage people; specifically</p> <p>4 Mr. Wright, correct?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. Is it typical for a CM to request</p> <p>7 removal of a contractor?</p> <p>8 <b>A. It sometimes happens.</b></p> <p>9 Q. So at this time Ms. Neal was still the</p> <p>10 contracting officer?</p> <p>11 <b>A. I believe so.</b></p> <p>12 Q. What investigation -- you told</p> <p>13 Ms. Neal to say, tell them we will investigate.</p> <p>14 What investigation happened?</p> <p>15 <b>A. We just looked into the contract</b></p> <p>16 <b>whether we could remove a person because they</b></p> <p>17 <b>didn't follow a safety aspect, and we found no</b></p> <p>18 <b>supporting evidence.</b></p> <p>19 MR. WAX: You found what?</p> <p>20 THE WITNESS: We found nothing that</p> <p>21 would allow us to remove a contractor for this</p> <p>22 one single incident.</p>	251	<p>1 Q. Was Mr. Skov a hindrance on this</p> <p>2 project?</p> <p>3 <b>A. Not as far as I could see. He was</b></p> <p>4 <b>trying to ensure the government got the project</b></p> <p>5 <b>it had acquired in accordance with the terms and</b></p> <p>6 <b>conditions of the contract. But other than that,</b></p> <p>7 <b>no.</b></p> <p>8 (Exhibit 117 marked for identification</p> <p>9 and attached to the transcript.)</p> <p>10 Q. Do you know if -- what Mr. Skov was</p> <p>11 doing on the project was actually enforcing the</p> <p>12 contract?</p> <p>13 <b>A. That's what OBO informed me of, yes.</b></p> <p>14 Q. So you had conversations with people</p> <p>15 at OBO about Mr. Skov's conduct on the project?</p> <p>16 <b>A. As far as I recall, yes.</b></p> <p>17 Q. And who did you discuss that with?</p> <p>18 <b>A. Mostly with Donna and through Donna.</b></p> <p>19 Q. And as best you can recall, what were</p> <p>20 those conversations? What were the issues that</p> <p>21 were raised and what were the responses that were</p> <p>22 received?</p>
250	<p>1 Q. This wasn't the only time that</p> <p>2 Mr. Wright tried to get some of the Montage</p> <p>3 people removed, correct?</p> <p>4 <b>A. I'm not sure. I believe it happened</b></p> <p>5 <b>on other occasions.</b></p> <p>6 Q. And you recall receiving numerous</p> <p>7 formal letters from Montage, and even Montage's</p> <p>8 counsel, requesting the removal of Mr. Skov and</p> <p>9 Mr. Wright, correct?</p> <p>10 <b>A. I remember receiving emails from</b></p> <p>11 <b>Montage, correct.</b></p> <p>12 Q. Did you not receive any of the letters</p> <p>13 that were sent from Montage's counsel?</p> <p>14 <b>A. I don't recall letters, no.</b></p> <p>15 Q. Were you not aware that Ms. Hamidina,</p> <p>16 who's sitting right next to me, wrote half a</p> <p>17 dozen letters to Ms. Neal requesting that</p> <p>18 Mr. Skov and Mr. Wright be removed from the job</p> <p>19 because they were hampering the project?</p> <p>20 <b>A. Not in particular, no.</b></p> <p>21 Q. Those didn't come to you?</p> <p>22 <b>A. No, not that I recall.</b></p>	252	<p>1 <b>A. I remember -- apparently to me it was</b></p> <p>2 <b>a conflict of -- personality conflicts with the</b></p> <p>3 <b>contractor's personnel and our personnel. And I</b></p> <p>4 <b>spoke to Donna about it and she spoke to OBO, and</b></p> <p>5 <b>it appeared to me that it was a personnel</b></p> <p>6 <b>conflict and that both teams just needed to get</b></p> <p>7 <b>together, get the work done and leave each other</b></p> <p>8 <b>alone.</b></p> <p>9 Q. Were some of the issues -- strike</p> <p>10 that.</p> <p>11 Did Mr. Skov in addition to having a</p> <p>12 personnel conflict with Montage, did he also have</p> <p>13 issues with Ms. Neal?</p> <p>14 <b>A. I don't know. I never heard of any.</b></p> <p>15 Q. Maybe better said, did Ms. Neal have</p> <p>16 issues with Mr. Skov?</p> <p>17 <b>A. Some, I believe.</b></p> <p>18 Q. And some of those issues were that he</p> <p>19 wasn't respecting her authority as the contract</p> <p>20 officer?</p> <p>21 <b>A. I don't think it went that far.</b></p> <p>22 Q. How would you describe those issues?</p>

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64 (253 to 256)

<p style="text-align: right;">253</p> <p><b>1 A. Just really a nuisance. Having a</b></p> <p><b>2 personnel issue, a personal problem working with</b></p> <p><b>3 the contractor.</b></p> <p>4 Q. So Ms. Neal's issue with Mr. Skov was</p> <p>5 only that Mr. Skov and Montage had issues?</p> <p><b>6 A. That's what I believe.</b></p> <p>7 Q. I'll show you what's been marked as</p> <p>8 Exhibit 117 to these depositions. It's an email</p> <p>9 string between you and Ms. Neal in February of</p> <p>10 2017. I'm only going to ask you about the first</p> <p>11 section on top, but feel free to read as much of</p> <p>12 this email as you choose.</p> <p><b>13 A. (Reviewing.) Yes, I read it.</b></p> <p>14 Q. So Ms. Neal is reporting to you,</p> <p>15 quote, The COR constantly challenging the CO's</p> <p>16 decisions and revisiting the determination made</p> <p>17 by contracting only hampers the progression more</p> <p>18 than it already S. I think she probably meant</p> <p>19 as.</p> <p><b>20 A. Is.</b></p> <p>21 Q. Or is.</p> <p>22 So is that consistent with the</p>	<p style="text-align: right;">255</p> <p>1 going to ask you again about the top email, but</p> <p>2 read as much as you choose.</p> <p><b>3 A. I might have something different here.</b></p> <p>4 Q. Is it not --</p> <p><b>5 A. Which exhibit?</b></p> <p>6 Q. Exhibit 58.</p> <p>7 MR. WAX: No. It's a Telecon memo.</p> <p>8 THE WITNESS: Yeah.</p> <p>9 MS. HOSTETLER: Okay.</p> <p>10 (Exhibits 118 and 119 marked for</p> <p>11 identification and attached to the transcript.)</p> <p>12 BY MS. HOSTETLER:</p> <p>13 Q. Mr. Vivian, do you recall Ms. Neal</p> <p>14 telling you that Mr. Wright would refer to</p> <p>15 Montage or its employees as grunts?</p> <p><b>16 A. I don't recall that.</b></p> <p>17 Q. And do you recall Ms. Neal telling you</p> <p>18 that during a Q and A session he asked one of</p> <p>19 Montage's contractors if he's, quote, having fun</p> <p>20 yet?</p> <p><b>21 A. I don't recall that.</b></p> <p>22 Q. Do you recall Ms. Neal telling you</p>
<p style="text-align: right;">254</p> <p>1 communications that you had with Ms. Neal about</p> <p>2 Mr. Skov's conduct on this job?</p> <p><b>3 A. Yes, correct.</b></p> <p>4 Q. Does that refresh your recollection</p> <p>5 that he was challenging her decisions as well as</p> <p>6 having a personnel issue with Montage?</p> <p><b>7 A. Well, decisions can be challenged.</b></p> <p><b>8 She just has to put her foot down and assure that</b></p> <p><b>9 the contracting officer's representative is</b></p> <p><b>10 abiding by the contract and her direction in</b></p> <p><b>11 accordance with the contract.</b></p> <p>12 Q. And did she put her foot down?</p> <p><b>13 A. As far as I know.</b></p> <p>14 Q. And did Mr. Skov acknowledge her</p> <p>15 authority?</p> <p><b>16 A. Yes, I believe he did.</b></p> <p>17 MS. HOSTETLER: Would you provide the</p> <p>18 witness with Exhibit 58.</p> <p>19 Q. The court reporter's handed you what's</p> <p>20 been previously marked as Exhibit 58, which is an</p> <p>21 email string, March of 2017, between you and</p> <p>22 others. Take a minute and look at that. And I'm</p>	<p style="text-align: right;">256</p> <p>1 that that was consistent with the behavior that</p> <p>2 she saw from Mr. Wright during her site visit in</p> <p>3 February of 2017?</p> <p><b>4 A. I don't recall that.</b></p> <p>5 Q. Who is Chrissy Fields?</p> <p><b>6 A. Chrissy Fields is another contracting</b></p> <p><b>7 officer in the contracting office who works with</b></p> <p><b>8 me.</b></p> <p>9 Q. And Mr. Powell, Robert Powell?</p> <p><b>10 A. He's the director of my section, of</b></p> <p><b>11 AQM. My boss.</b></p> <p>12 Q. And so why would Ms. Neal be copying</p> <p>13 Ms. Fields and Mr. Powell about an issue with</p> <p>14 Mr. Wright?</p> <p><b>15 A. I'm not sure.</b></p> <p>16 Q. Do they have any -- do they have any</p> <p>17 reporting or supervisory obligations over</p> <p>18 Mr. Wright?</p> <p><b>19 A. No.</b></p> <p>20 Q. Let me show you what's been marked as</p> <p>21 Exhibit 118 to these depositions. It's an email</p> <p>22 between you and Mr. Skov of June of 2017. Take a</p>



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65 (257 to 260)

<p style="text-align: right;">257</p> <p>1 minute and look at it. I'm going to ask you a 2 few questions. 3 <b>A. (Reviewing.) Yes, I'm done.</b> 4 Q. So your email to Mr. Skov ends with, 5 "Please explain in detail the issues you are 6 attempting to create." 7 Is that your view, that Mr. Skov would 8 attempt to create issues with the contract -- 9 contractor? 10 <b>A. Well, he's wondering about who gave</b> 11 <b>the contractor authority to change designers from</b> 12 <b>Page, so Page to BCG. And it was probably</b> 13 <b>accepted considerably before this letter -- or</b> 14 <b>this email changed hands. So I'm trying to find</b> 15 <b>out what exactly is his issue with the contractor</b> 16 <b>having changed years ago to a different designer.</b> 17 Q. Do you recall if he ever responded to 18 you? 19 <b>A. I don't recall.</b> 20 Q. Let me show you what's been marked as 21 Exhibit 119, which is a June 30, 2017 email. 22 Take a look at that. Again, this is between you</p>	<p style="text-align: right;">259</p> <p>1 resolve some labor issues on site? 2 <b>A. Correct, yes.</b> 3 Q. And I think I asked you some questions 4 earlier this morning that I don't believe that 5 you're aware of. 6 Were you aware of Mr. Wright's 7 involvement in talking to Montage's employees? 8 MR. WAX: Objection to form. 9 MS. HOSTETLER: Let me rephrase that. 10 Q. Were you aware that Mr. Wright was 11 requesting translation of employee compensation 12 information to provide to Montage's employees? 13 MR. WAX: Objection to form. 14 <b>A. I knew there was an issue with</b> 15 <b>compensation to the employees and that the COR</b> 16 <b>and Mr. Wright was working to ensure the</b> 17 <b>contractor's personnel were being compensated</b> 18 <b>correctly.</b> 19 Q. Is it your recollection that you -- 20 that Mr. Wright and Mr. Skov were supposed to be 21 working this issue through on behalf of the 22 government?</p>
<p style="text-align: right;">258</p> <p>1 and Ms. Vivian. 2 MR. WAX: He is Mr. Vivian. 3 Q. Excuse me, you and Ms. Neal. And this 4 may be the response to the last or it may be a 5 different issue. But take a look at it and I'll 6 ask you some questions. 7 <b>A. (Reviewing.) Yes, I'm done.</b> 8 Q. So it appears that Ms. Neal responded 9 to that email chain, whether or not Mr. Skov did 10 or not, and she says, quote, He, referring to 11 Mr. Skov, likes to stir the pot, so to speak, 12 close quote. Is that your impression of Mr. Skov 13 as well? 14 <b>A. Yeah, uh-huh.</b> 15 Q. Did that create problems with the 16 contractor? 17 <b>A. I don't know. They seem -- like I</b> 18 <b>said, they seem to have a personality conflict</b> 19 <b>getting along with each other.</b> 20 Q. You recollect that there was an issue, 21 I believe we touched on it earlier this morning, 22 with Montage hiring a local labor lawyer to</p>	<p style="text-align: right;">260</p> <p>1 <b>A. Correct, yes.</b> 2 Q. So your testimony is that you knew 3 that was happening and you approved of their 4 involvement? 5 <b>A. I knew that they -- they felt that the</b> 6 <b>employees had complained that they weren't</b> 7 <b>getting compensated properly in accordance with</b> 8 <b>the Ecuadorian laws. And if the personnel were</b> 9 <b>not getting compensated properly, then the U.S.</b> 10 <b>government would be held responsible. In fact,</b> 11 <b>the ambassador would be held responsible for</b> 12 <b>paying the employees any money due to them.</b> 13 <b>So yes, it was the government's</b> 14 <b>responsibility to assure that the contractor was</b> 15 <b>operating in accordance with the local labor</b> 16 <b>laws.</b> 17 Q. Didn't you actually tell Mr. Skov and 18 Mr. Wright several times to stand down and let 19 Montage work that issue? 20 <b>A. Sure, yes. I mean we identified the</b> 21 <b>problem and now we have to make sure that they're</b> 22 <b>correcting it. So they should -- not to be too</b></p>

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66 (261 to 264)

<p style="text-align: right;">261</p> <p><b>1 involved in the contractor's business of</b></p> <p><b>2 compensating their employees, but certainly</b></p> <p><b>3 involved enough to ensure that they were doing it</b></p> <p><b>4 properly.</b></p> <p>5 Q. And in fact they were involved because</p> <p>6 they were circulating information to the</p> <p>7 employees, were they not?</p> <p><b>8 A. I don't know. They were circulating</b></p> <p><b>9 information to -- the employees were given new</b></p> <p><b>10 information and they were getting --</b></p> <p>11 Q. No, sir. No, sir.</p> <p>12 MR. WAX: Can we let one person finish</p> <p>13 and then the next person go?</p> <p>14 Q. Are you done with your answer?</p> <p><b>15 A. I'm done.</b></p> <p>16 Q. Are you aware that Mr. Wright was</p> <p>17 providing information to the employees suggesting</p> <p>18 that they were not being properly compensated?</p> <p><b>19 A. I'm not aware of that.</b></p> <p>20 Q. Are you aware that Mr. Wright was</p> <p>21 talking to the employees and trying to get them</p> <p>22 to strike?</p>	<p style="text-align: right;">263</p> <p><b>1 would be something the government would be --</b></p> <p><b>2 would need to be aware of.</b></p> <p>3 Q. But you weren't -- you're telling me</p> <p>4 you were not aware of this email so you didn't</p> <p>5 investigate this issue, correct, or this</p> <p>6 affidavit?</p> <p><b>7 A. I don't recall seeing this affidavit.</b></p> <p>8 MR. WAX: I don't have an affidavit.</p> <p>9 Am I looking at the right document?</p> <p>10 MS. HOSTETLER: Yes, you are, sir.</p> <p>11 Q. Did Ms. Neal bring this issue to your</p> <p>12 attention?</p> <p><b>13 A. I don't recall.</b></p> <p>14 Q. Would you take a look at Exhibit 61.</p> <p>15 This is an email string between, at the bottom,</p> <p>16 Ms. Neal, Mr. Wright and others, and at the top</p> <p>17 just between Mr. Rendon and himself and</p> <p>18 Mr. Wright. So take a few minutes and look at</p> <p>19 that and I'll ask you a few questions.</p> <p><b>20 A. (Reviewing.) Okay. I can't read the</b></p> <p><b>21 Spanish ones.</b></p> <p>22 Q. I can't either.</p>
<p style="text-align: right;">262</p> <p><b>1 A. I'm not aware of that.</b></p> <p>2 MS. HOSTETLER: Can you show the</p> <p>3 witness Exhibit 55?</p> <p>4 Q. You're looking at Exhibit 55, which</p> <p>5 has some affidavits, some in English and some in</p> <p>6 Spanish.</p> <p>7 Have you seen that document before?</p> <p><b>8 A. I don't recall seeing it.</b></p> <p>9 MR. WAX: Are you saying this is an</p> <p>10 affidavit?</p> <p>11 MS. HOSTETLER: Yes. It was attached</p> <p>12 to an email.</p> <p>13 Q. Have you not seen this document</p> <p>14 before?</p> <p><b>15 A. I don't recall seeing it.</b></p> <p>16 Q. Is this the kind of information that</p> <p>17 as -- you were not the CO at the time, but you</p> <p>18 were the CO's supervisor, that you would want to</p> <p>19 know about that was happening on the job site?</p> <p>20 MR. WAX: Objection to form.</p> <p><b>21 A. Well, if there was any encouragement</b></p> <p><b>22 for the workers to go on strike, then yes, that</b></p>	<p style="text-align: right;">264</p> <p>1 Were you aware that Mr. Wright</p> <p>2 requested Mr. Rendon to translate the benefits</p> <p>3 into Spanish?</p> <p><b>4 A. Into Spanish? No, I was not aware.</b></p> <p>5 Q. Do you see where he specifically asks</p> <p>6 Mr. Rendon to translate the benefits into</p> <p>7 Spanish?</p> <p><b>8 A. Yes, I see that here, but I wasn't</b></p> <p><b>9 aware of it.</b></p> <p>10 Q. And this is after the CO, Ms. Neal,</p> <p>11 told Mr. Wright that Montage is having their</p> <p>12 attorneys work through this issue, correct?</p> <p><b>13 A. Correct.</b></p> <p>14 (Exhibit 120 marked for identification</p> <p>15 and attached to the transcript.)</p> <p>16 Q. The court reporter has marked as an</p> <p>17 exhibit to these depositions Exhibit 120, an</p> <p>18 email string. And again, you are, I believe,</p> <p>19 copied on a couple of the emails later but</p> <p>20 certainly not the last several. Take a minute</p> <p>21 and read that and I'm going to ask you a few</p> <p>22 questions about it.</p>

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67 (265 to 268)

<p style="text-align: right;">265</p> <p>1     <b>A. (Reviewing.) Yes, I'm done.</b></p> <p>2     Q.   Exhibit 120, does this refresh your</p> <p>3   recollection to the fact that you got involved in</p> <p>4   this dispute?</p> <p>5     <b>A. Oh, I remember the dispute, yeah.</b></p> <p>6     Q.   And you got involved, at least</p> <p>7   according to this email string, when Mr. Skov</p> <p>8   copies you on one of the emails --</p> <p>9     <b>A. Correct.</b></p> <p>10    Q.   -- and then you're throughout the</p> <p>11   rest?</p> <p>12   <b>A. Right.</b></p> <p>13    Q.   And you tell Mr. Skov -- and I'm</p> <p>14   referring to the email at the bottom of what ends</p> <p>15   with 24.</p> <p>16   <b>A. Yes.</b></p> <p>17    Q.   So it's the February 24, 2017,</p> <p>18   6:04 a.m. You tell Mr. Skov essentially that</p> <p>19   it's not his job to adjudicate the complaints,</p> <p>20   correct?</p> <p>21   <b>A. Correct.</b></p> <p>22    Q.   Mr. Skov responds and you come back to</p>	<p style="text-align: right;">267</p> <p>1     <b>A. Yeah, reasonably.</b></p> <p>2     Q.   Where Mr. Wright says to Mr. Skov,</p> <p>3   "This guy needs to be taken down"?</p> <p>4     <b>A. Uh-huh.</b></p> <p>5     Q.   Did you ever sense any sort of</p> <p>6   animosity from Mr. Wright?</p> <p>7     <b>A. No.</b></p> <p>8       (Exhibits 121 through 125 marked for</p> <p>9   identification and attached to the transcript.)</p> <p>10    Q.   Let me show you what was marked as</p> <p>11   Exhibit 121 to these depositions, which is</p> <p>12   another email string.</p> <p>13       MR. WAX: Exhibit 121?</p> <p>14       MS. HOSTETLER: Yes, sir.</p> <p>15    Q.   Involving some of these issues. And</p> <p>16   just a few questions. You'll see part of it's</p> <p>17   that same email string at the end and then</p> <p>18   different people get on as it finishes.</p> <p>19   <b>A. (Reviewing.) Yes.</b></p> <p>20    Q.   So referring to Exhibit 121, on the</p> <p>21   front page there's an email from you to Nicole</p> <p>22   Varnes or Varnes --</p>
<p style="text-align: right;">266</p> <p>1   him later that day and you say, quote, Allow the</p> <p>2   contractor to work and resolve the issues with</p> <p>3   its workforce. Just because there are complaints</p> <p>4   does not make them correct or -- I think you mean</p> <p>5   true, correct?</p> <p>6     <b>A. Yes.</b></p> <p>7     Q.   And Mr. Skov responds to you that he</p> <p>8   doesn't take any sides on this matter, correct?</p> <p>9     <b>A. Correct.</b></p> <p>10    Q.   But he didn't -- he continued to be</p> <p>11   involved, did he not?</p> <p>12   <b>A. Yes, he was.</b></p> <p>13    Q.   You again tell him in a later email,</p> <p>14   "It took years for these folks to realize they</p> <p>15   wanted to raise allegations of mistreatment with</p> <p>16   Montage. Twenty four days is not a long for</p> <p>17   Montage and its workers to hold discussions to</p> <p>18   resolve these issues," correct?</p> <p>19   <b>A. Correct.</b></p> <p>20    Q.   And then there's some internal email</p> <p>21   between Mr. Skov and Mr. Wright where apparently</p> <p>22   you're not high on their list. Fair enough?</p>	<p style="text-align: right;">268</p> <p>1     <b>A. Yes.</b></p> <p>2     Q.   -- on March 9, 2017. Who is she?</p> <p>3     <b>A. I'm not sure. It must be somebody in</b></p> <p>4   <b>OBO.</b></p> <p>5     Q.   And these other people that are copied</p> <p>6   on here, which it looks like your actually just</p> <p>7   responding to an email, do you know who they are?</p> <p>8   Can you tell us who they are? We know who Jorge</p> <p>9   Vazquez is. At the time he was Mr. Skov's</p> <p>10   immediate superior. Do you know who Karen</p> <p>11   Heimsoth is?</p> <p>12   <b>A. No.</b></p> <p>13    Q.   Toby Kinnett?</p> <p>14   <b>A. No.</b></p> <p>15    Q.   Ardeshir Kanga?</p> <p>16   <b>A. Kanga, yeah. He's a person in OBO</b></p> <p>17   <b>construction management. I'm not sure what</b></p> <p>18   <b>position he had at the time.</b></p> <p>19    Q.   And how about Brian McKenna?</p> <p>20   <b>A. Yeah. He's also a person in OBO.</b></p> <p>21   <b>And -- OBO construction management.</b></p> <p>22    Q.   Phyllis Patten?</p>

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68 (269 to 272)

<p style="text-align: right;">269</p> <p>1 <b>A. She's an assistant on the 13th floor</b>  2 <b>to the OBO director, I think.</b>  3 Q. Stephen Stewart?  4 <b>A. No.</b>  5 Q. Powell --  6 <b>A. Bob Powell?</b>  7 Q. Yeah, Bob Powell. Oh, I guess it's  8 Bruce Stephen Stewart maybe.  9 <b>A. Yeah.</b>  10 Q. And Bob Powell?  11 <b>A. He's my supervisor.</b>  12 Q. And do you know why all of these  13 people were included in this email string  14 discussing this labor issue?  15 <b>A. No. Somebody included them.</b>  16 Q. And that was Ms. Varnes included them?  17 Because you were responding to her email.  18 <b>A. Yeah. They were included at some</b>  19 <b>point before I even responded.</b>  20 Q. These are all people above Mr. Skov?  21 <b>A. I can't say that for sure. Because</b>  22 <b>this is OBO's organization.</b></p>	<p style="text-align: right;">271</p> <p>1 Q. And that's in response to Ms. Varnes's  2 requests for why nothing official has been done  3 to resolve this issue?  4 <b>A. Correct.</b>  5 Q. And then you end by saying,  6 "Termination has not been considered as there's  7 no evidence of any mistreatment has occurred.  8 The project is near completion. I believe the  9 workers may be concerned about their future."  10 Did you think that resolved  11 Ms. Varnes's concerns?  12 <b>A. I'm not sure.</b>  13 Q. Did you hear any more from any of the  14 other people that were copied on this, including  15 your boss, as to what's going on?  16 <b>A. Well, there were -- there was regular</b>  17 <b>correspondence about the proper payment of</b>  18 <b>workers down in Guayaquil, to ensure that this</b>  19 <b>didn't come back and get assessed against the</b>  20 <b>U.S. government if they weren't properly</b>  21 <b>compensated.</b>  22 Q. And once again, Mr. Skov and</p>
<p style="text-align: right;">270</p> <p>1 Q. And when you say in your email of  2 March 9, 2017 on Exhibit 121, quote, It is coming  3 from your PD, close quote, what do you mean by  4 that?  5 <b>A. It's coming from the person that --</b>  6 <b>OBO's project director, they assigned to the</b>  7 <b>project.</b>  8 Q. In other words, you thought they were  9 taking issue with something that the contracting  10 side was doing when it was really information  11 that was being stirred up by Mr. Skov?  12 MR. WAX: I'm going to object to the  13 form.  14 <b>A. Well, it's -- the information is</b>  15 <b>coming from him, right.</b>  16 Q. And then you go on to say that all  17 communication issued by the CO is official. What  18 do you mean by that?  19 <b>A. The contracting officer -- if I signed</b>  20 <b>as the contracting officer or anybody signs as</b>  21 <b>the contracting officer, it is official contract</b>  22 <b>correspondence.</b></p>	<p style="text-align: right;">272</p> <p>1 Mr. Wright have their private conversation on the  2 top?  3 <b>A. Uh-huh.</b>  4 Q. Did Mr. Skov ever exhibit any sort of  5 animosity towards you?  6 <b>A. No.</b>  7 Q. So when he says let me know -- I guess  8 this would be Mr. Wright saying to Mr. Skov, "Let  9 me know if you want me to step in on this and get  10 right to the point of contracting falling flat on  11 its face," you --  12 <b>A. Yeah, that's Mr. Skov.</b>  13 Q. That's Mr. -- that's to Mr. Skov from  14 Mr. Wright, correct?  15 <b>A. No, from Mr. --</b>  16 Q. -- Wright to Mr. Skov?  17 <b>A. Yeah. No, it says to Mr. Skov. Oh, I</b>  18 <b>see, from Mr. Wright. It's reversed.</b>  19 Q. And I think I had asked you earlier,  20 you had never sensed any animosity from  21 Mr. Wright?  22 <b>A. That's correct.</b></p>

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69 (273 to 276)

<p style="text-align: right;">273</p> <p>1 Q. Have you ever met Mr. Wright?</p> <p>2 <b>A. Not that I recall.</b></p> <p>3 Q. And I think I asked you. You're not</p> <p>4 working on any current projects with him or</p> <p>5 anything?</p> <p>6 <b>A. No, I'm not.</b></p> <p>7 MR. WAX: When you refer to</p> <p>8 Mr. Powell, can you refer to him as his</p> <p>9 supervisor and not his boss?</p> <p>10 MS. HOSTETLER: Okay. Fair enough. I</p> <p>11 didn't mean anything by that.</p> <p>12 THE WITNESS: I know.</p> <p>13 MS. HOSTETLER: So I apologize if that</p> <p>14 was not appropriate.</p> <p>15 THE WITNESS: Not to worry.</p> <p>16 Q. Let me show you what's been marked as</p> <p>17 Exhibit 122 to your deposition and take a minute</p> <p>18 and look at it. You are on the bottom email but</p> <p>19 again not on the top email.</p> <p>20 <b>A. (Reviewing.) Yes.</b></p> <p>21 Q. So in Exhibit 122, Mr. Wright is</p> <p>22 reaching out to Mr. Vazquez. And in the chain of</p>	<p style="text-align: right;">275</p> <p>1 seriously?</p> <p>2 <b>A. Yes, of course.</b></p> <p>3 Q. And in fact Montage responded to you,</p> <p>4 did they not? Showing you Exhibit 123, which is</p> <p>5 an email string of March 10, 2017. Take a minute</p> <p>6 and look at that.</p> <p>7 <b>A. (Reviewing.) Yes, I'm done.</b></p> <p>8 Q. So in this email, which is a variation</p> <p>9 or a continuation of Exhibit 122, in Exhibit 123,</p> <p>10 Montage responds and says they're going to</p> <p>11 provide you documentation, and they clearly take</p> <p>12 issue with Mr. Wright's characterization of</p> <p>13 what's happening, correct?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. And did in fact Montage provide you</p> <p>16 with information and ultimately get this issue</p> <p>17 resolved?</p> <p>18 <b>A. Yes, they did.</b></p> <p>19 Q. And of course we have Mr. Wright and</p> <p>20 Mr. Skov once again emailing at the top.</p> <p>21 Did you consider the -- Mr. Wright's</p> <p>22 email to Mr. Vazquez an internal email that</p>
<p style="text-align: right;">274</p> <p>1 command he would be a supervisor to Mr. Wright.</p> <p>2 Mr. Vazquez would be a supervisor to Mr. Wright?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. With Mr. Skov in between?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And so Mr. Wright's reaching out to</p> <p>7 Mr. Vazquez as well as Ms. Neal as the</p> <p>8 contracting officer, you and several others</p> <p>9 requesting some action. You then turn around and</p> <p>10 request Montage to respond and give you some</p> <p>11 information --</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. -- correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Mr. Wright then forwards that on to</p> <p>16 Mr. Coleman. Who is Mr. Coleman?</p> <p>17 <b>A. Someone at the Guayaquil embassy. I'm</b></p> <p>18 <b>not sure who he is.</b></p> <p>19 Q. And so Mr. Wright is telling the</p> <p>20 embassy, somebody at the embassy that it doesn't</p> <p>21 sound like contracting is too excited about your</p> <p>22 situation. Were you taking this matter</p>	<p style="text-align: right;">276</p> <p>1 shouldn't have been distributed outside of</p> <p>2 contracting?</p> <p>3 <b>A. No.</b></p> <p>4 Q. So let me show you what's been marked</p> <p>5 as Exhibit 124, which is another version of that</p> <p>6 email string. You'll see that same request at</p> <p>7 the bottom, you know, from Mr. Wright to</p> <p>8 Mr. Vazquez and others, and then you to Montage</p> <p>9 and Montage back to you. And then the last --</p> <p>10 the front page is new information.</p> <p>11 <b>A. (Reviewing.) Yes, I'm done.</b></p> <p>12 Q. So when you described earlier there</p> <p>13 was a personnel issue between Montage --</p> <p>14 <b>A. Personality conflict.</b></p> <p>15 Q. Personality conflict -- is what</p> <p>16 Mr. Skov was referencing on the bottom of this</p> <p>17 page in response to Montage evidence of what you</p> <p>18 viewed as a personality conflict?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. And your response to them, as the</p> <p>21 former military officer that you are, is just</p> <p>22 finish the project construction, please, correct?</p>



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70 (277 to 280)

<p style="text-align: right;">277</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. And again of course Mr. Wright and</p> <p>3 Mr. Skov have their side chat?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. I guess I should say saying, "This guy</p> <p>6 is beyond believe." I think that means belief,</p> <p>7 not believe.</p> <p>8 Were you informed that Mr. Wright had</p> <p>9 discussions with folks about getting arrest</p> <p>10 warrants issued for Nela and Thad relating to</p> <p>11 this labor dispute?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Is that the kind of thing that should</p> <p>14 have come to your attention?</p> <p>15 <b>A. It should not occur, right.</b></p> <p>16 MS. HOSTETLER: Can you show the</p> <p>17 witness Exhibit 5 to Mr. Skov's deposition?</p> <p>18 Q. So that's the wrong exhibit, sir. So</p> <p>19 you can try to read it, but I can tell you those</p> <p>20 are Mr. Skov's notes.</p> <p>21 <b>A. That's brutal, yeah.</b></p> <p>22 Q. So while we're looking for what that</p>	<p style="text-align: right;">279</p> <p>1 documentation or the Ecuadorian laws or that is</p> <p>2 at odds with the terms of the settlement</p> <p>3 negotiated between the contractor and its</p> <p>4 employees, may come back on us."</p> <p>5 What did you mean by that?</p> <p>6 <b>A. I mean that we should let the</b></p> <p>7 <b>contractor work out their issues with their</b></p> <p>8 <b>employees and not get involved in – get in the</b></p> <p>9 <b>middle of it.</b></p> <p>10 Q. And did Mr. Skov and Mr. Wright</p> <p>11 continue to get in the middle of this issue?</p> <p>12 <b>A. Well, they continued to inform the</b></p> <p>13 <b>people at the embassy – or at the consulate and</b></p> <p>14 <b>us in Washington that there was an issue that</b></p> <p>15 <b>needed to be resolved.</b></p> <p>16 Q. And is it fair to say that Mr. Skov</p> <p>17 and Mr. Wright had a contrary view of the</p> <p>18 situation than you did?</p> <p>19 <b>A. Well, they were handling it in a</b></p> <p>20 <b>different manner than what I would have</b></p> <p>21 <b>preferred, which would have been to just work</b></p> <p>22 <b>with the contractor to get it corrected without</b></p>
<p style="text-align: right;">278</p> <p>1 document is, because clearly I wrote down the</p> <p>2 wrong number again, let me show you what the</p> <p>3 court reporter's marked as Exhibit 125 to this</p> <p>4 deposition. And this is in that same timeframe</p> <p>5 as the last several emails that we've been</p> <p>6 looking at. So March 13, 2017. Take a look at</p> <p>7 this document and I'll ask you a few questions.</p> <p>8 <b>A. (Reviewing.) Yes, I'm done.</b></p> <p>9 Q. So on Exhibit 125, it's a March 13,</p> <p>10 2017 email from you to Patricia Fietz. Who is</p> <p>11 she?</p> <p>12 <b>A. Someone again at the – she's the</b></p> <p>13 <b>principal officer. Yeah, she's someone at the</b></p> <p>14 <b>embassy – or the consulate in Guayaquil.</b></p> <p>15 Q. And also this is to Mr. Wright and</p> <p>16 copied to Mr. Skov. Was Mr. Skov not on site</p> <p>17 during this project or this portion of the</p> <p>18 project?</p> <p>19 <b>A. I'm not sure.</b></p> <p>20 Q. So the last sentence of that second</p> <p>21 paragraph says, "Any action directed by us, based</p> <p>22 on misinterpretation of the contractor's</p>	<p style="text-align: right;">280</p> <p>1 <b>getting numerous individuals involved.</b></p> <p>2 MS. HOSTETLER: Would you show the</p> <p>3 witness Exhibit 54.</p> <p>4 Q. I would like to show you what's</p> <p>5 previously been marked as Exhibit 54, which is an</p> <p>6 email between Mr. Wright and Mr. Skov, "Re: Top</p> <p>7 secret until the cat jumps out of the hat,"</p> <p>8 March 15, 2017. And I believe it relates to the</p> <p>9 same issue, the labor dispute.</p> <p>10 <b>A. (Reviewing.) Yes, I'm done.</b></p> <p>11 Q. So were you aware that Mr. Wright and</p> <p>12 Mr. Skov were discussing warrants for Nela and</p> <p>13 Thad?</p> <p>14 <b>A. No, I wasn't.</b></p> <p>15 Q. Is that the type of information that</p> <p>16 should have been passed up to the contracting</p> <p>17 officer and then to you?</p> <p>18 <b>A. I don't know if it's true or not. I</b></p> <p>19 <b>have no idea about this.</b></p> <p>20 Q. Mr. Wright's using his personal</p> <p>21 account for this. And I believe the David L.M.</p> <p>22 Skov is not his government email.</p>

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71 (281 to 284)

<p style="text-align: right;">281</p> <p>1 <b>A. Uh-huh.</b></p> <p>2 Q. Mr. Wright says, "I image termination</p> <p>3 this week?"</p> <p>4 Did you understand Mr. Wright and</p> <p>5 Mr. Skov to be rooting for termination for</p> <p>6 Montage?</p> <p>7 <b>A. Not that I know of. They never voiced</b></p> <p>8 <b>that to me.</b></p> <p>9 Q. Did you understand that they were</p> <p>10 rooting for arrest warrants for some of Montage's</p> <p>11 key personnel?</p> <p>12 <b>A. They never communicated that to me.</b></p> <p>13 Q. That would be inappropriate, wouldn't</p> <p>14 it?</p> <p>15 <b>A. I had seen no issues that would</b></p> <p>16 <b>justify such an action.</b></p> <p>17 Q. And if they were rooting for them to</p> <p>18 be terminated and arrested, that would be</p> <p>19 inappropriate for a contracting officer</p> <p>20 representative and a contracting -- a CM?</p> <p>21 MR. WAX: Objection.</p> <p>22 <b>A. Well, they have no ability to</b></p>	<p style="text-align: right;">283</p> <p>1 <b>to be considered before a contracting officer</b></p> <p>2 <b>terminates a contract. And I don't think we</b></p> <p>3 <b>would get that far in this situation.</b></p> <p>4 Q. You know that with regard to this</p> <p>5 labor issue they were even asking for the bonds,</p> <p>6 and I believe it's even referenced in Exhibit 54,</p> <p>7 they were asking for the bond information?</p> <p>8 <b>A. That's correct.</b></p> <p>9 Q. And you told them that that was a</p> <p>10 contracting responsibility and if somebody needed</p> <p>11 to do that, you or Ms. Neal would take care of</p> <p>12 that, correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. Do you have any idea what Mr. Wright</p> <p>15 means when he says, "Hopefully then you can head</p> <p>16 Viv's way when the investigation starts"?</p> <p>17 <b>A. No idea.</b></p> <p>18 Q. Do you know what investigation he was</p> <p>19 talking about?</p> <p>20 <b>A. No.</b></p> <p>21 Q. There was another issue on this</p> <p>22 project that dealt with the submission of</p>
<p style="text-align: right;">282</p> <p>1 <b>influence such a decision.</b></p> <p>2 Q. They certainly have the ability to</p> <p>3 influence a termination to the extent that they</p> <p>4 can impact how the contract -- contractor works</p> <p>5 and hold the contract to higher-than-required</p> <p>6 contract standards and specifications. I mean</p> <p>7 certainly a PD and a COR and a CM have a lot of</p> <p>8 ability to influence whether or not a contractor</p> <p>9 has a good working relationship or whether</p> <p>10 they're constantly on the line trying to get them</p> <p>11 terminated?</p> <p>12 MR. WAX: Objection, form.</p> <p>13 <b>A. They can influence the contractor's</b></p> <p>14 <b>performance but they can't influence a</b></p> <p>15 <b>termination.</b></p> <p>16 Q. Can they hinder the project?</p> <p>17 MR. WAX: Objection, form.</p> <p>18 <b>A. I suppose they could find a way.</b></p> <p>19 Q. And if they hinder the project and it</p> <p>20 causes delay, can that result in potentially</p> <p>21 termination by the contracting officer?</p> <p>22 <b>A. There are a number of issues that have</b></p>	<p style="text-align: right;">284</p> <p>1 drawings and the appropriate --</p> <p>2 MR. WAX: Seal.</p> <p>3 MS. HOSTETLER: Thank you.</p> <p>4 Q. -- the appropriate seal that went on</p> <p>5 it. Do you recall that issue?</p> <p>6 <b>A. Yes, I do.</b></p> <p>7 Q. And Mr. Wright and Mr. Skov referred</p> <p>8 to that as fraud and falsification, correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. And you recall that the government</p> <p>11 ultimately resolved that as being a clerical</p> <p>12 error?</p> <p>13 <b>A. No, I don't remember that.</b></p> <p>14 MS. HOSTETLER: Will you show the</p> <p>15 witness Exhibit 58.</p> <p>16 Q. If you would take a look at what was</p> <p>17 previously marked as Exhibit 58. And the section</p> <p>18 is this one in between with the Najib OBO/CE, and</p> <p>19 it's the third bullet point down.</p> <p>20 MR. WAX: What is this?</p> <p>21 <b>A. (Reviewing.) Yes, I read that</b></p> <p>22 <b>section.</b></p>

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72 (285 to 288)

<p style="text-align: right;">285</p> <p>1 Q. Does this refresh your recollection 2 that the issue that Mr. Skov and Mr. Wright 3 referred to as falsification and fraud were 4 resolved as a clerical error? 5 <b>A. No. That's this gentleman, Najib, 6 talking to Mr. Skov and whoever else this 7 document is addressed to. But when I spoke to 8 Montage about it, they told me that there was an 9 issue with the person in the designer of record, 10 that she had an accident or something and she was 11 in the hospital. And there was some issue with 12 people not stamping the documents as was agreed 13 by their original contract. And I spoke to other 14 people in OBO about it and legal counsel. And we 15 basically agreed that there was no harm or intent 16 to defraud the government or to falsify 17 documentation. They were using the staff to 18 further the project by stamping the documentation 19 and submitting it as they would have done. It 20 was all correctly submitted. They weren't trying 21 to get away with anything.</b> 22 Q. And that was ultimately resolved,</p>	<p style="text-align: right;">287</p> <p>1 you about the items at the bottom under ALM. 2 <b>A. (Reviewing.) Okay.</b> 3 Q. So ALM is your group? 4 <b>A. Correct.</b> 5 Q. Are any of those 11 items that 6 Mr. Wright lists in Exhibit 126 accurate 7 depictions of project issues on this project? 8 <b>A. No.</b> 9 Q. You would disagree with all of those? 10 <b>A. Yes.</b> 11 Q. Do you know -- 12 <b>A. Maybe some discussions with the 13 contractor without reporting it to the field, 14 yes, that's a possibility.</b> 15 Q. Is that -- that happens on many 16 projects, probably? 17 <b>A. Sure. Because we're the contracting 18 officer. So if the contractor wants to talk to 19 us, then they want to talk to us.</b> 20 Q. Are you aware of any reason why 21 Mr. Wright would be preparing such a list? 22 <b>A. No.</b></p>
<p style="text-align: right;">286</p> <p>1 correct? 2 <b>A. Yes. There were a set number of 3 documents that I understand were incorrectly or 4 falsely stamped. And we worked through those 5 number of documents and that was the end of the 6 issue.</b> 7 Q. Was it the end of the issue for 8 Mr. Wright and Mr. Skov? 9 <b>A. I'm not sure.</b> 10 MS. HOSTETLER: Why don't we take five 11 minutes. I think I only have a couple more 12 documents, but I want to consult here. 13 MR. WAX: Thanks. 14 (A recess was taken.) 15 (Exhibits 126, 127 and 128 marked for 16 identification and attached to the transcript.) 17 BY MS. HOSTETLER: 18 Q. Mr. Vivian, let me show you what's 19 been marked as Exhibit 126 to this deposition, 20 which is another email between Mr. Wright and 21 Mr. Skov. And I know that you're not on this, 22 but take a look and read it. I'm going to ask</p>	<p style="text-align: right;">288</p> <p>1 Q. Let me show you what's been marked as 2 Exhibit 127, which is another email chain that 3 you are not on. So take a minute and look at it. 4 This is between Mr. Wright and Mr. Powell. And 5 Mr. Powell is your superior? 6 <b>A. No, no. This is a different Powell.</b> 7 Q. Oh, I see. Thank you. Thank you. 8 <b>A. (Reviewing.) Yes.</b> 9 Q. So the beginning of this email is on 10 the back page of Exhibit 127. This is an email 11 string in May of 2017. Mr. Wright is emailing to 12 Mr. Powell stuff but he's making reference to 13 criminal -- alleged criminal conduct by Montage. 14 Do you see that, sir? 15 <b>A. Yes.</b> 16 Q. Did Mr. Wright or Mr. Skov ever bring 17 to your attention any allegations of criminal 18 conduct by Montage such as referenced in this 19 email? 20 <b>A. No.</b> 21 Q. If there were such criminal conduct 22 wouldn't you have needed to be aware of it as the</p>

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289	<p>1 contracting officer?</p> <p>2 <b>A. Certainly aware of it. But of course,</b></p> <p>3 <b>I can't get involved in criminal activity. I</b></p> <p>4 <b>would have to turn that over to the proper</b></p> <p>5 <b>authorities.</b></p> <p>6 Q. But you would want to know if there</p> <p>7 was any criminal -- even allegations of criminal</p> <p>8 activity on a project that you're overseeing?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Mr. Wright also suggests that you, as</p> <p>11 the contracting officer's boss, his words, not</p> <p>12 mine, is lining his pockets.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Did Mr. Wright ever express such --</p> <p>15 anything such like that to you?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Do you know where that comes from?</p> <p>18 <b>A. From his head. No, I have no idea.</b></p> <p>19 Q. Maybe not his head.</p> <p>20 MR. WAX: That's a good one.</p> <p>21 THE WITNESS: Yeah, yeah, definitely.</p> <p>22 MR. WAX: I needed that.</p>	291	<p>1 that?</p> <p>2 MR. WAX: No. It's done. Work it out</p> <p>3 with Jeff.</p> <p>4 MS. HOSTETLER: I understand. Put</p> <p>5 your objection on the record.</p> <p>6 BY MS. HOSTETLER:</p> <p>7 Q. Are you aware of an OIG investigation</p> <p>8 involving senior management at OBO?</p> <p>9 MR. WAX: I'm just going to direct the</p> <p>10 witness not to answer.</p> <p>11 Q. Mr. Vivian, you described Mr. Wright</p> <p>12 and Mr. Skov's relationship with the contractor</p> <p>13 as a personality conflict?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. Did that personality conflict impede</p> <p>16 the contractor's ability to sit down and</p> <p>17 negotiate project issues?</p> <p>18 <b>A. I'm not aware -- I can't comment on</b></p> <p>19 <b>that. I don't know.</b></p> <p>20 Q. If there was a personality conflict</p> <p>21 between Mr. Skov, Wright and Montage, Mr. Skov</p> <p>22 and Wright on one side and Montage on the other,</p>
290	<p>1 Q. Let me show you what's been marked as</p> <p>2 Exhibit 128 to these depositions and ask you to</p> <p>3 take a look at that.</p> <p>4 MR. WAX: I'm going to object to the</p> <p>5 introduction of this document, which is on its</p> <p>6 face privileged.</p> <p>7 MS. HOSTETLER: Is this an attorney?</p> <p>8 MR. WAX: No. It's law enforcement</p> <p>9 privilege. It says so right on the document.</p> <p>10 MS. HOSTETLER: Where does it say</p> <p>11 that?</p> <p>12 MR. WAX: Right on the back. "Law</p> <p>13 enforcement sensitive. Do not forward, release</p> <p>14 or disseminate." So you work this out with Jeff.</p> <p>15 MS. HOSTETLER: All right. I will</p> <p>16 work that out with Jeff.</p> <p>17 BY MS. HOSTETLER:</p> <p>18 Q. So let me ask you, Mr. Vivian. Are</p> <p>19 you aware of an OIG investigation?</p> <p>20 MR. WAX: Okay. Let's stop right</p> <p>21 there.</p> <p>22 MS. HOSTETLER: Can I not ask him</p>	292	<p>1 would that impede their ability to meet and</p> <p>2 confer on issues relating to the project?</p> <p>3 <b>A. It shouldn't. They're professionals.</b></p> <p>4 <b>They should be able to get around that.</b></p> <p>5 Q. Would that personality conflict affect</p> <p>6 the -- the ability to timely resolve RFIs?</p> <p>7 <b>A. It should do, but once again they're</b></p> <p>8 <b>professionals. It may do, but they're</b></p> <p>9 <b>professionals. It should not.</b></p> <p>10 Q. Did it?</p> <p>11 <b>A. I'm not sure.</b></p> <p>12 Q. How about RFPs, timely result in RFPs?</p> <p>13 <b>A. I'm not sure.</b></p> <p>14 Q. Your job during part of this as the</p> <p>15 contracting officer was to be the arbitrator of</p> <p>16 disputes and recognize when the government was</p> <p>17 engaging in conduct that would hinder the</p> <p>18 project. Did Mr. Skov and Mr. Wright engage in</p> <p>19 such conduct that hindered the project?</p> <p>20 <b>A. I'm not sure.</b></p> <p>21 Q. Based upon your disagreement with many</p> <p>22 of the things that Mr. Wright and Mr. Skov</p>

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293	<p>1 reported, how can you rely upon their</p> <p>2 representations to you in rendering your final</p> <p>3 decisions?</p> <p>4 <b>A. I have to just look at the record and</b></p> <p>5 <b>rely on Donna Neal, who was assisting and</b></p> <p>6 <b>reviewing the information with them and other OBO</b></p> <p>7 <b>personnel to have reached the proper decision.</b></p> <p>8 Q. The record being the drafts of the</p> <p>9 contracting officer's final decisions that you</p> <p>10 were provided. Is that the record you're</p> <p>11 referring to?</p> <p>12 <b>A. That's the decision that they were</b></p> <p>13 <b>providing to me. That is my suggestion, right.</b></p> <p>14 Q. But you had Mr. Skov and Ms. Neal</p> <p>15 jointly providing you information. Do you know</p> <p>16 how much of that information came from Mr. Skov</p> <p>17 versus from Ms. Neal?</p> <p>18 <b>A. No, I do not.</b></p> <p>19 Q. Let me just show you one more</p> <p>20 document. I have a couple questions.</p> <p>21 (Exhibit 129 marked for identification</p> <p>22 and attached to the transcript.)</p>	295	<p>1 Q. So if you turn the page to page 44.</p> <p>2 "On-site OBO contractor relationship is important</p> <p>3 to project collaboration."</p> <p>4 You would agree with that, would you</p> <p>5 not, sir?</p> <p>6 <b>A. Sure, yes.</b></p> <p>7 Q. And you would agree at the beginning</p> <p>8 of that second paragraph, that PDs are critical</p> <p>9 to the success of embassy projects?</p> <p>10 <b>A. Yes, correct.</b></p> <p>11 Q. And that while some PDs make an active</p> <p>12 effort to collaborate with contractors, other PDs</p> <p>13 do not?</p> <p>14 <b>A. I agree with that.</b></p> <p>15 Q. And is it fair to say that on this</p> <p>16 project we're in the other PDs do not category?</p> <p>17 <b>A. I would agree with that.</b></p> <p>18 Q. And if you go on down it says that</p> <p>19 their interviews reflected that PDs who do not</p> <p>20 collaborate well can have a challenging</p> <p>21 relationship with a contractor that makes it</p> <p>22 difficult to reach timely solutions to project</p>
294	<p>1 Q. Mr. Vivian, the court reporter's</p> <p>2 handed you Exhibit 129, which is the</p> <p>3 September 2018 GAO report. You're familiar with</p> <p>4 this report, are you not, sir?</p> <p>5 <b>A. I've seen it before, yes.</b></p> <p>6 Q. Let me ask you to turn to page 43.</p> <p>7 And there's a section that says, "Formal</p> <p>8 partnering during construction could help avoid</p> <p>9 collaboration challenges that effect efficiency</p> <p>10 at project delivery."</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Would you read that paragraph to</p> <p>13 yourself and let me ask you a question about it.</p> <p>14 <b>A. (Reviewing.) Yes, I've read it.</b></p> <p>15 Q. Would it be fair to say that that</p> <p>16 paragraph described the Guayaquil project?</p> <p>17 <b>A. A difficult working relationship with</b></p> <p>18 <b>the project director, yeah, I would agree with</b></p> <p>19 <b>that.</b></p> <p>20 Q. And that OBO was a difficult business</p> <p>21 partner?</p> <p>22 <b>A. Yeah, I would agree with that.</b></p>	296	<p>1 and contract issues.</p> <p>2 Would you agree that that was an issue</p> <p>3 on this case, on this project?</p> <p>4 <b>A. Yes. But there's two sides to every</b></p> <p>5 <b>argument. The contractor was not helpful in all</b></p> <p>6 <b>instances as well.</b></p> <p>7 MS. HOSTETLER: I think those are my</p> <p>8 questions. I thank you for your time today, sir.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 MR. WAX: Thank you for a relatively</p> <p>11 painless experience.</p> <p>12 (Off the record at 6:14 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>



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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

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3 I, Paula Flint, the officer before  
4 whom the foregoing deposition was taken, do  
5 hereby certify that the foregoing transcript is a  
6 true and correct record of the testimony given;  
7 that said testimony was taken by me  
8 stenographically and thereafter reduced to  
9 typewriting under my direction; that reading and  
10 signing was not requested; and that I am neither  
11 counsel for, related to, nor employed by any of  
12 the parties to this case and have no interest,  
13 financial or otherwise, in its outcome.

14 IN WITNESS WHEREOF, I have hereunto  
15 set my hand and affixed my notarial seal this  
16 24th day of November 2019.  
17 My commission expires January 31, 2023.  
18 Notary Registration Number: 277127

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22

*Paula M. Flint*